Commission for Impartial Courts

INTERIM REPORT TO THE
JUDICIAL COUNCIL

AUGUST 2008

JUDICIAL COUNCIL
OF CALIFORNIA

COMMISSION FOR
IMPARTIAL COURTS

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Executive Summary

History and Charge

The Commission for Impartial Courts (CIC) was formed by Ronald M. George, Chief Justice of California and Chair of the Judicial Council, in September 2007. The CIC's overall charge is to study and recommend ways to ensure judicial impartiality and accountability for the benefit of all Californians. The CIC's membership includes not only appellate justices and trial court judges, but also court executive officers; prominent former members of the Legislature; and leaders of the bar, media, law schools, business community, educational institutions, and civic groups.

Problem Statement

California's courts have long been recognized as among the finest in the country. Under the leadership of Chief Justice George, the California judiciary has implemented a number of far-reaching improvements over the past several years, and during that time there have been few threats to the impartiality of California's judiciary. This is not the case elsewhere, however. As has been widely reported in the press, many states have seen a rise in attacks on courts and judges by partisan and special interests seeking to influence judicial decisionmaking. Likewise, in many states judicial elections have increasingly begun to take on the qualities of elections for other political office in that they are becoming more expensive, negative, and politicized.

At a two-day summit convened by the Judicial Council in November 2006, California's judicial leaders concluded that unless the Judicial Council took decisive action, the trends seen in other states would inevitably spread to California. Summit participants identified four basic approaches to preserving the impartiality of and the public's confidence in California's judiciary: (1) modification of the current method of judicial selection and retention; (2) changes to improve judicial candidate campaign conduct; (3) changes to improve the financing of judicial campaigns; and (4) activities to improve voter information about judicial candidates and public understanding of the role of the courts and nature of judicial decisionmaking. Chief Justice George thereafter established the 87-member CIC to study and report on each of the approaches the summit identified.

The CIC's overall goal is to make recommendations to the Judicial Council so that it can effectively exercise leadership in addressing the contemporary challenges to nonpartisan and impartial judiciaries. Through the work of the task forces, the CIC is reviewing ways to safeguard the legitimacy of California's court system by preserving its reputation for impartiality and nonpartisanship and is also maintaining judicial impartiality by promoting the selection and retention of judges who have integrity, fortitude, and commitment to the rule of law.

The CIC also is aware of the importance of ensuring that the appropriate mechanisms of accountability are in place so that the public understands that an impartial and independent judiciary does not mean independence from oversight or ethical standards. The work of the CIC focuses on furtherance of the public good and finding solutions that serve the long-term and common interests of all Californians.

Structure of the CIC

The CIC is composed of a steering committee and four separate task forces:[1] Public Information and Education, Judicial Candidate Campaign Conduct, Judicial Campaign Finance, and Judicial Selection and Retention. The membership of the steering committee and the task forces is detailed in appendixes A–E of this report.

The 17-member steering committee is chaired by Associate Justice Ming W. Chin of the California Supreme Court and is charged with overseeing and coordinating the work of the four task forces, receiving periodic task force reports and recommendations, and presenting overall recommendations to the Judicial Council by July 2009. The steering committee has a 24-month term.

The 18-member Task Force on Public Information and Education is chaired by Administrative Presiding Justice Judith D. McConnell, of the Court of Appeal, Fourth Appellate District. The 19-member Task Force on Judicial Candidate Campaign Conduct is chaired by Associate Justice Douglas P. Miller, of the Court of Appeal, Fourth Appellate District. The 15-member Task Force on Judicial Campaign Finance is chaired by Judge William A. MacLaughlin, of the Superior Court of Los Angeles County. The 23-member Task Force on Judicial Selection and Retention is chaired by Associate Justice Ronald B. Robie, of the Court of Appeal, Third Appellate District. Each task force has an 18-month term.

Summary of Work Completed to Date

As of May 2008, the steering committee has met a total of four times and the task forces have met in person between two and four times. The Task Force on Public Information and Education already has agreed on more than 30 tentative recommendations to the council, including 3 recommendations for immediate implementation:

- Collect, summarize, and evaluate public outreach resources currently available.
- Provide Judicial Council support for model civics education staff development program.
- Seek funding for public outreach film.

These recommendations are detailed below. The Task Force on Judicial Candidate Campaign Conduct has agreed on several preliminary recommendations, with a number of others still under consideration. The Task Force on Judicial Campaign Finance has not yet agreed on any tentative recommendations, although it has considered a number of the major campaign finance issues affecting judicial elections. The Task Force on Judicial Selection and Retention has agreed on more than 25 tentative recommendations.

[1] Task force chairs are also members of the steering committee.

CIC Steering Committee

Establishment of Subcommittees

The steering committee determined the need for a smaller unit to manage administrative issues and make other decisions as required between task force meetings. Accordingly, an Executive Committee was formed, consisting of the chairs of the steering committee and its four task forces.

At its December 3, 2007, meeting, the steering committee discussed the possibility of holding public hearings or public forums to help spotlight some of the issues confronting the CIC. An eight-member Subcommittee on Public Hearings was formed to explore options and develop ideas on the topic.

At its May 20, 2008, meeting, a three-member Survey Subcommittee was appointed to work with the Public Policy Institute of California (PPIC) to consider areas of interest for polling citizens to provide data that would be useful to the CIC. Examples of topics to be surveyed include the public's actual awareness of issues such as judicial campaign conduct and campaign finance.

Meetings

To date the steering committee has held five in-person meetings: September 11 and December 3, 2007, and February 25, May 20, and July 14, 2008. The Executive Committee has met four times, both in person and by conference call: October 29 and December 13, 2007, and February 22 and April 29, 2008. The Subcommittee on Public Hearings has met nine times, both in person and by conference call: December 21, 2007, and February 8, February 28, April 8, April 17, April 28, May 20, June 2, and June 20, 2008. One meeting was held in conjunction with the Task Force on Public Information and Education.

Public Forum

A public forum was held in Sacramento on July 14, 2008. The forum featured commentary and recommendations from the following prominent government, justice system, academic, and civic leaders:

Hon. Gray Davis, Former Governor of California
Hon. Pete Wilson, Former Governor of California
Hon. Don Perata, President pro Tempore of the California Senate
Hon. Thomas J. Moyer, Chief Justice of Ohio
Hon. Ira R. Kaufman, President, California Judges Association
Mr. Jeffrey L. Bleich, President, State Bar of California
Prof. Kathleen M. Sullivan, Stanford Law School
Prof. Laurie L. Levenson, Loyola Law School Los Angeles
Mr. Manny Medrano, Reporter/Anchor, KTLA News, Los Angeles
Ms. Mary G. Wilson, President, League of Women Voters of the United States

The CIC steering committee met briefly immediately following the public forum, and the steering committee and task forces will review and consider the recommendations made by the above speakers at future meetings.

Resources

Steering committee members share information frequently, such as reports on other states' judicial elections, newspaper articles, and publications like the Winter 2008 issue of the American Bar Association's *The Brief*, which was devoted entirely to fair and impartial courts. Members also receive information on the national scene from the Web sites of organizations such as the Justice at Stake campaign, a nationwide, nonpartisan partnership of more than 45 judicial, legal, and citizen organizations that support fair and impartial courts; the Brennan Center for Justice at New York University School of Law; and the National Center for State Courts (NCSC). The Justice at Stake organization also has served as a source of television commercials from contested elections across the country. These examples of "attack ads" have been compiled on DVD and are shown by steering committee members whenever they are asked to speak.

Consultants

At its December 3, 2007, meeting, the steering committee participated in a training session entitled "Communications Strategies: Focusing the Message" conducted by communications specialist Kelly Burke. Mr. Burke, a former journalist and veteran media/presentation consultant, specifically tailored the training to the CIC's subject matter, and the session highlighted skills and methodologies required for effective messaging to key audiences.

Collaboration With Other Groups

The steering committee began working with the PPIC in May and is currently collecting questions from each task force on important areas of concern for public information. The Survey Subcommittee will meet again in July with the PPIC to determine next steps.

The chair of the steering committee and the chair of the Task Force on Public Information and Education also will meet with the California State Superintendent of Public Instruction to discuss the current public school content standards and curriculum framework for civics education, review to what extent and level of accuracy the courts and the judiciary are covered, and determine where and how improvements can be made.

The steering committee is overseeing and coordinating the work of the four task forces and will be taking their recommendations to the Judicial Council in 2009.

Task Force on Public Information and Education

Executive Summary

Charge

The Task Force on Public Information and Education is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to improve public information and education concerning the judiciary, both during judicial election campaigns and otherwise. Proposals may include methods to improve voter access to accurate and unbiased information about the qualifications of judicial candidates and to improve public understanding of the role and decisionmaking processes of the judiciary.

As the task force develops public information and education strategies, it should focus on ways to prevent or respond to unfair criticism, personal attacks on judges, and institutional attacks on the judiciary; inappropriate judicial campaign conduct; and other challenges to judicial impartiality arising from unpopular judicial decisions. In forming strategies, the task force should consider all available avenues to develop and strengthen partnerships with other organizations, such as state and local bar associations, educational institutions, and the California Judges Association (CJA), which has a program for responding to criticism of judges.

Findings

The task force found both an immediate and a long-term need to inform and educate students, voters, and the public about the importance of fair, impartial, and accountable courts. Although the 2005 Public Trust and Confidence Survey revealed that the public has solid confidence in the courts, there is widespread ignorance about the role of the courts in a representative form of government. That ignorance has its foundation in our schools, where civics instruction has been drastically curtailed. Community outreach and educational projects and programs, which are plentiful in some communities but nonexistent in others, could help compensate for a dearth of civics education. However, they often go unused because of a lack of coordination and oversight. An uneducated public is more susceptible to an unwarranted attack on the judiciary. When special interest groups and politicians make those attacks, no consistent or effective response mechanism is in place to defend the judicial branch.

Recommendations for Immediate Implementation

Many of the recommendations made by the task force have been marked “high priority.” The task force recommends that the following three recommendations be implemented immediately:[2]

[2] Three of the task force’s working groups—education, public outreach, and voter education—developed similar, high-priority, multipronged recommendations, elements of which are detailed in the working group sections below.

Collect, summarize, and evaluate public outreach resources currently available for use by judges and court administrators and collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits.
These efforts would include the following:

- Create a repository of all these resources;
- Assign Administrative Office of the Courts (AOC) staff to coordinate outreach, education, and voter education efforts at the state and local levels;
- Cultivate "influence leaders" who would make use of the repository in local courts; and
- Create a standing advisory group on public outreach that would help the judicial branch maintain a focus on outreach efforts.

Provide Judicial Council support to the Educating for Democracy Initiative (Assem. Bill 2544 [Mullin]), a model civics education staff development program.
This bill would require the state Superintendent of Public Instruction to develop a plan and make recommendations to the Legislature and the Governor on the development of such a program. The Judicial Council already has voted to support this measure.

Seek funding for a public outreach film.
Specifically, the task force recommends that the AOC seek funding to retain a documentary filmmaker to create a brief film conveying the importance of fair, impartial, and accountable courts. The film should be general enough to be appropriate for various audiences, including the general public, voters, senior high school students, and jurors.

Background

Problem Statement

The judicial branch currently is not sufficiently informing and educating legislators, students, voters, and the general public about the role of the courts and the importance of judicial impartiality.

Methodology and Process for Exploring Issues and Reaching Solutions

Establish working groups

Because of the task force's far-ranging charge, its chair established four distinct working groups: Public Outreach and Response to Criticism, Education, Voter Education, and Accountability.

To focus discussion, each working group drafted a goal statement. Members of the working groups identified topics and experts on those topics for research purposes and made recommendations. Recommendations and considerations by the working groups were presented and discussed at task force meetings.

Meetings

To date, the task force has held four in-person meetings: September 11 and November 6, 2007, and February 8 and May 6, 2008. Each working group has met telephonically three to four times and communicates regularly via e-mail.

Resources

More than 100 pertinent publications, articles, handbooks, and Web sites have been posted on the task force Moodle site for review and consideration.

Consultant

Bert Brandenburg serves as consultant to the task force. Mr. Brandenburg is the executive director of the Justice at Stake Campaign, a national partnership working to keep courts fair, impartial, and independent. He also serves on the National Ad Hoc Advisory Committee on Judicial Campaign Conduct and the Coalition Alliance of the American Bar Association's Coalition for Justice.

Collaboration with other groups

A summary of task force discussions and recommendations relative to accountability and, specifically, judicial performance evaluations was submitted to the Task Force on Judicial Selection and Retention in February 2008. The Voter Education Working Group met in April with Mark Jacobson of the AOC's Office of the General Counsel, committee counsel to the Task Force on Judicial Candidate Campaign Conduct. In addition, members of the task force have been working with the commission's Public Hearing Subcommittee to identify themes, target audiences, and speakers for public hearings and forums.

Preliminary Recommendations

The task force's recommendations to date are set forth below and presented by working group. The recommendations are further organized by level of priority.

Public Outreach and Response to Criticism Working Group

Methods and procedures
This eight-member working group met telephonically on four occasions. Response to criticism was viewed by the task force as a component of public outreach discussions and considerations.

Goal statement
Democracy can thrive only with the informed participation of its citizens. State and federal constitutions have given the three branches of government different roles and responsibilities. Of the three branches, the judiciary is the least understood by the public. The working group's goal is to better inform the public about the rule of law and the importance of an independent judiciary in its implementation.

Summary of findings, recommendations, and considerations
To further the goal of informing the public, the working group recommends the creation of statewide public outreach programs, best practices for community outreach, and a clearinghouse for such programs. It also recommends the creation of compelling DVDs with messages about the importance of fair and impartial courts to be used in jury assembly rooms, community meetings, and classrooms. Local and statewide outreach teams should be formed, and counties should be identified for pilot projects to develop judicial community leaders who can then teach their diverse communities about impartial courts. The judiciary should cultivate influence leaders and create a statewide Response to Criticism Committee so that institutional attacks on the judiciary will be answered quickly and constructively. To ensure the fair and informed reporting and discussion of the courts and legal affairs, the working group recommends continued work with media organizations. To meet these goals, ongoing partnerships should be encouraged with local and state bar associations, educational institutions, and the CJA.

High-priority recommendations
Identify public outreach options
The AOC should collect, summarize, and evaluate public outreach resources currently available for judges and court administrators and should also collect, summarize, and evaluate educational materials for K–12 teachers and for judges and court administrators making classroom visits. These efforts would include the following:

- Creating a repository of all of the above resources;
- Assigning AOC staff to coordinate outreach, education, and voter education efforts at the state and local level;
- Cultivating "influence leaders" who would make use of the repository in local courts; and

- Creating a standing advisory group on public outreach that would assist the judicial branch in maintaining a focus on outreach efforts.

Also, the AOC should maintain a menu of public outreach options for local courts. The menu should reflect the diversity of the state's demographic and geographical differences and include descriptions of the programs, what messages they include, where they can be used, and who the audience is.

Establish partnerships

The standing outreach advisory group should partner with local courts, bar associations, the CJA, the National Center for State Courts (NCSC), the State Bar, and others to offer outreach and public information programs and media guidelines to courts or regional areas. It should establish benchmarks of good practice, leverage current programs (such as Law Day activities), and help assemble local teams to assist courts with local outreach programs. It should explore ethnic media outlets to reach more audiences and investigate multimedia outreach opportunities, such as the California Courts Web site, local court Web sites, radio, podcasts, PSAs, YouTube, instant messaging, and the California Channel.

Support community outreach

The judicial branch should more fully embrace community outreach activities. Rule 10.603 of the California Rules of Court requires the presiding judge to support and encourage judges actively to engage in community outreach to increase public understanding of and involvement with the justice system and to obtain appropriate community input regarding the administration of justice. In addition, standard 10.5 of the Standards of Judicial Administration provides that judicial participation in community outreach program activities should be considered an official judicial function in order to promote public understanding of and confidence in the administration of justice.

Use current constituency program and enhance Web sites

The AOC currently has a vehicle to facilitate the practices outlined by the working group. Its Connecting with Constituencies Program was designed to help trial courts engage their constituency groups in a meaningful dialogue to improve courts and do strategic planning. This directly stems from the Judicial Council's short-term strategy to revive community-focused court planning in response to the 2005 Public Trust and Confidence Survey in the California Courts. Because Web sites serve as the public face of the trial courts, current plans include developing resources to help interested trial courts redesign their Web sites.

Create stimulating film for use in various venues

Funds should be identified to retain a documentary filmmaker to create a film conveying the importance of fair, impartial, and accountable courts. The film would be general in focus in order to address various audiences—the general public, community groups, jurors, and high school students.

Develop a model for responding to criticism
The working group is presently developing a model "response to criticism" plan to provide guidelines for responding immediately to unfair criticism of or unusual media attention toward the institution or a judge when the criticism or attention threatens to undermine fair and impartial courts. The model plan can be used by existing local and statewide associations to create rapid response teams to provide accurate, consistent, and timely information while maintaining the public's trust and confidence in the justice system.

Medium-priority recommendations
Institutionalize media training programs by continuing to educate judges and court administrators about how to interact with the media
Media training should be included in programs such as New Judge Orientation, Judicial College programs, and judicial leadership programs, and through the Trial Court Presiding Judges, Court Executives, and Appellate Advisory Committees. Such programs currently exist throughout the nation. The *California Judicial Conduct Handbook*, published by the CJA, has a section on dealing with the media, and the AOC recently has published the *Media Handbook for California Court Professionals.* The National Judicial College, working with the NCSC and the media, has three programs aimed at journalists, judges, and court staff. Programs currently exist in Fresno, San Diego, and Santa Clara Counties. They are often referred to as "law school for reporters." Programs should be ongoing because of leadership and journalist turnover.

Support and create media education programs
Current media education programs should be supported and new programs created to educate the media about the judicial system. Following research, draft an effective practice curriculum model for educating the media.

Educate legislators
Some attacks against the judicial branch come from politicians. With term limits, many legislators lack knowledge of the branch and therefore could benefit from a basic introduction to the courts. Many programs already exist and should be reinforced for local use. The following examples are all run by the AOC Office of Governmental Affairs (OGA):

- After the Chief Justice delivers the annual State of the Judiciary address to a joint session of the Legislature, a Legislative-Executive-Judicial Forum follows.
- The Bench-Bar Coalition meets with legislators at the state capital during Day in Sacramento activities.
- Day-on-the-Bench is a statewide program in which legislators spend a day visiting a court.
- The New Legislator Orientation Program affords an opportunity to meet and interact with new members and provide education on the branch.

Cultivate "influence leaders"
The branch should encourage local champions in each court who will inspire other judges or local bar members to engage in outreach efforts. A few suggestions include:

- For courts with viable outreach programs, working with sister counties;
- Posting a court's total outreach hours on a Web site;
- Awarding continuing education credits for involvement in education efforts; and
- Encouraging retired judges to engage in outreach efforts.

Educate captive audiences
The message should be appropriate to the audience. Potential jurors can be educated via juror questionnaires. Jurors also could be shown tailored videos in assembly rooms, experience a judge reviewing the process after a trial or dismissal, or receive a thank-you postcard. Other opportunities include outreach to attorneys renewing State Bar dues, law students requesting bar applications, law enforcement training programs, business schools, the Department of Motor Vehicles, and other licensing agencies.

Create a video on the function and importance of the courts for local court Web sites
This would include an explanation of how judges are appointed or elected.

Identify several counties as pilot project locations in which to develop judicial community leaders who teach about impartial courts and create outreach teams with local and statewide membership
For example, the Bar Association of San Francisco could use its Law Academy and School to College programs (successful instructional and mentoring programs for students at low-income high schools) as vehicles to teach about impartial courts.

Next steps for Public Outreach and Response to Criticism Working Group
As next steps, the working group will:

- Screen and select public outreach materials for eventual posting on a Web site; and
- Continue to refine the Response to Criticism Plan and determine appropriate groups to collaborate with: Bench-Bar Media Steering Committee, CJA leadership, bar associations, and Court Executives and Trial Court Presiding Judges Advisory Committees.

Education Working Group

Methods and procedures
This five-member working group met telephonically three times to consider public outreach through educational institutions. Considerations and recommendations were presented at task force meetings.

Goal statement
A fair and impartial court system is vital for maintaining a healthy democracy, protecting individual rights, and upholding the Constitution. The strength of the judiciary requires that each new generation of citizens understand and embrace our constitutional ideals, institutions, and processes. While a focus on K–12 education is probably the broadest and

most ambitious aspect of the task force's charge, the members believe that the judicial branch should take a leadership role to ensure that every child in California receives quality civics education and to encourage and support judges, courts, and teachers in the education of students about the judiciary and its function in a democratic society.

Summary of findings, recommendations, and considerations

Members of the working group are concerned that students may lack the knowledge and skills to participate effectively in government because of a lack of K–12 civics education. State education testing is focused on math and English and will soon include science. The working group believes, however, that social studies are not considered an education priority in school districts given the lack of testing in that area.

Connecting with ethnic groups is also important, and the working group believes that the best way to reach an immigrant population is by reaching school-age children, as it is those children who help their families become familiar with local culture. The working group believes, however, that students at high-impact schools may have less opportunity for learning social studies and related topics because of those schools' focus on math, reading, and science. As a result, civics lessons may be disproportionately unavailable to minority students.

High-priority recommendations

Support strategies for systematic or foundational changes to civics education in California

The Judicial Council should participate in strategies to elevate the importance of civics education, which should begin in kindergarten. Such education should include broad concepts about democratic and republican forms of government and should not be limited to the importance of courts and their impartiality. Academic standards for civics education already exist, and the Judicial Council should lobby support for having the schools honor those standards and strengthen the quality of their instruction.

Identify allies (e.g., bar, law enforcement) and garner political clout to improve civics education

The Judicial Council and the AOC should partner with the Governor's Office, the Legislature, the Department of Education, and the California Campaign for Civics Education. California economists were successful in revising curriculum standards to include an economic component, and the model used by those economists could be followed with respect to civics education.

Expand teacher training programs, curriculum development, and education programs on civics to include the courts

Numerous programs already exist. For example, in summer 2008, 50 K–12 teachers from around the state will participate in California on My Honor: Civics Institute for Teachers. And the AOC developed Courts in the Classroom, a Web tutorial for 8th–12th graders focusing on the judicial system. That tutorial includes a teacher's resource manual. Participants of the Civics Institute for Teachers and a few trial courts have reviewed the tutorial and are supportive of its use in the classroom.

The Education for Democracy Coalition, working with the Assembly Education Committee, has introduced Assembly Bill 2544 (Mullin), a model civics education staff development program. At the task force's request, the Judicial Council recently voted to support the measure.

Participate in curriculum review
The State Department of Education and the State Board of Education are scheduled to review the history and social science K–12 curriculum framework and evaluation criteria in 2009 and will move to adopt a new curriculum framework in 2011. The Judicial Council and the AOC should take all steps necessary to ensure effective participation in the review of the curriculum framework and evaluation criteria. Specifically, the council should:

- Designate staff to monitor the curriculum review process by identifying key players, timelines, and opportunities for testimony and participation;
- Develop a plan for ensuring that the Judicial Council and the AOC are represented during the review process; and
- Develop specific proposals for guidelines and standards regarding judicial impartiality and independence to propose to the reviewing body.

Medium-priority recommendations
After collecting, summarizing, and evaluating outreach programs and making them available in a single repository, the AOC should pilot extensive outreach in three jurisdictions

Lower-priority recommendations
Promote recognition programs that bring attention to teachers and judges and court administrators who advance civics education
Recognizing certain individuals reinforces outreach practices and encourages others to participate.

Next steps for Education Working Group
As next steps, the working group will:

- Continue to explore avenues for expanding teacher training programs; and
- Identify the AOC staff responsible for monitoring the curriculum review process and opportunities for testimony and participation.

Voter Education Working Group

Methods and procedures
This six-member working group met telephonically four times.

Goal statement
An engaged and educated electorate is essential to maintaining public trust and confidence in a fair and impartial court system. Voters are entitled to abundant, full, and fair information that empowers them to make an informed choice about candidates for judicial office. The working group is exploring ways for the judicial branch to play an active role in encouraging a more informed and aware voting public, including affirming for courts and judges the value of providing neutral information to voters, creating resources for coordination of voter education and outreach efforts by the courts, and advocating for legislative and rule changes that would provide greater and more useful information for voters.

Summary of findings, recommendations, and considerations
In 2002, the nonpartisan Justice at Stake Campaign was created by a national partnership of 45 judicial, legal, and citizen groups to educate the public about the importance of fair and impartial courts. That same year, Justice at Stake hired a research and communications firm to conduct focus groups on judicial elections. The focus groups indicated that although voters would like to know how judges would decide particular issues, they are generally satisfied by candidate statements and general information regarding legal and professional experience, work, history, and education. There is a lack of consistency in this state on judicial candidate information provided to voters. Some bar associations conduct and publish judicial candidate evaluations. The current candidate information in voter pamphlets was not designed for judicial candidates.

High-priority recommendations
Seek high-level affirmation by judicial branch leaders to judges about the value of providing background information to nonpartisan venues
Branch leaders should encourage participation in candidate forums and in responding to appropriate candidate questionnaires. The importance of judicial participation could be communicated by the Chief Justice, perhaps in a letter to the state's judges.[3]

Incorporate information concerning how judges are elected into affirmative outreach efforts and communications with the media
This recommendation would include placement of this information in a prominent location on the California Courts Web site, as is currently done in the appellate district Web pages.

Expand the curriculum of the Appellate Justice Institute to provide training on how to write introductory paragraphs to opinions that summarize the case and the court's decision in a manner that is easily understandable to the media and public
This would address the fact that many opinions are not written in a manner that it easily digestible by nonattorneys.

[3] The members of the working group concluded that it is appropriate to forward this recommendation to the Task Force on Judicial Candidate Campaign Conduct for consideration.

Increase traffic to existing nonpartisan sources of information by partnering with other groups, such as bar associations
Citizens should have numerous avenues and opportunities for obtaining information on judicial elections, yet currently there is no statewide coordinated effort on voter education. The Judicial Council and the AOC should help courts set up communication networks and coordinate and share voter education practices. Voter education would benefit from pilot projects and recognition programs.

Establish collaboration among the League of Women Voters, the California Channel, and the Judicial Council to produce outreach videos (e.g., video voter guides, PSAs)
One example of the sort of video recommended is filmed interviews of judicial candidates.

The AOC staff assigned to coordinate voter education should provide assistance to the courts by setting up frameworks for coordinating and sharing practices

Medium-priority recommendations
Develop neutral toolkits for judicial candidates regarding voter information and best practices on public outreach
The model recommended would be neutral, not election specific, and could be accessed by both judges and candidates.[4] The model could be developed following focus group input and legal research. For example, it could include:

- Campaign conduct guidelines;
- Guidance on completing candidate questionnaires; and
- Inclusion or links to candidate biographical information.

Use voter focus groups to determine what to provide in education materials
In addition to other benefits, the use of focus groups would establish credibility in material development.

Engage a consultant to review the most effective uses of multimedia tools to promote voter education
Examples of such multimedia tools include the California Courts Web site and possible links to other sites. Review by an outside consultant could explore one-way content delivery systems such as podcasts, YouTube, and instant messaging.

Lower-priority recommendations
Continue to explore placing statements that educate voters about judicial candidates and the state's court system in sample ballot statements or other voter education guides
General descriptions concerning the responsibilities of judges should emphasize that judicial officers must be insulated from public pressure and remain free to fairly and impartially decide each case. Placing this responsibility on individual judicial candidates

[4] The members of the working group concluded that it is appropriate to forward this recommendation to the Task Force on Judicial Candidate Campaign Conduct for consideration.

is not ideal, as California has the highest candidate statement fees in the country, thus raising issues of fairness, accessibility, and consistency.

Next steps for Voter Education Working Group
As a next step, the working group will seek an opinion from the AOC Office of the General Counsel on whether the Judicial Council (on its California Courts Web site) or local court Web sites can include a link for election information.

Accountability Working Group

Methods and procedures
This five-member working group met telephonically three times. Justice Rebecca Kourlis and Pam Gagel, with the Institute for the Advancement of the American Legal System, joined the members for a question-and-answer session on guideline materials and the implementation of judicial performance evaluations in other states.

Goal statement
The judicial branch must work to enhance trust and confidence in the courts through access, procedural fairness in court proceedings, and judicial accountability. Assuring the public that the judiciary is accountable means that courts and judges exhibit high standards of impartiality, lack bias, exercise courtesy and professionalism, and promote efficiency and timeliness.

Summary of findings, recommendations, and considerations
The second goal of the judicial branch's long-term strategic plan is "independence and accountability." Consultant Bert Brandenburg related that independence and accountability are equal in the eyes of the public and that the road to independence is through accountability. However, with or without a system of evaluation, there will still be attacks on judges. After briefly considering judicial performance evaluations, the working group found many potential problems, but it nonetheless recommends that further study be undertaken and that the matter be forwarded to the Task Force on Judicial Selection and Retention. A plethora of information on the subject exists, including from sources such as NCSC and the Institute for the Advancement of the American Legal System. The institute's report, *Transparent Courthouse,* provides a blueprint for judicial performance evaluation by the institute. The institute has developed apolitical measures that currently are used in 19 states.

The working group found that the most significant issue regarding accountability is the public's lack of awareness about current accountability measures for courts. These include elections, appellate review, judicial education, media coverage, the Commission for Judicial Performance, the State Bar's Commission on Judicial Nominees Evaluation, and local bar association surveys. Public outreach and voter education efforts should inform the public that systems are in place to deal with judicial performance issues in fair and effective ways.

Methods for measuring court performance exist, such as NCSC's CourTools, which measures 10 essential areas of court performance. This measurement soon will be piloted in a fourth California trial court.

High-priority recommendations
Continue to study the implementation of judicial performance evaluations in California[5]

Inform the public that systems are in place to deal with judicial performance issues in fair and effective ways

Medium-priority recommendations
Review judicial branch accountability measures
The NCSC and the AOC have been piloting court performance measures, CourTools, in three California trial courts and in numerous other states.

Next steps for Accountability Working Group
As next steps, the working group will:

- Develop language to share with the public on accountability measures and consider opportunities for education; and
- Continue to study judicial branch accountability measures, such as CourTools.

[5] The members agreed that recommendations that judicial performance evaluations are more appropriately within the charge of the Task Force on Judicial Selection and Retention.

Next Steps for Task Force

The following are specific actions to be taken by the task force:

1. Screen and identify public outreach materials for eventual posting on public and judicial branch Web sites.

2. Continue to refine statements that educate voters about judicial candidates and the state's court system for inclusion in sample ballot statements. Research the appropriate state departments and methods for implementing.

3. Develop language to share with the public on accountability measures and consider opportunities for education.

4. Continue to convene working groups to continue discussions and refine and develop additional recommendations.

Task Force on Judicial Candidate Campaign Conduct

Executive Summary

Charge

The Task Force on Judicial Candidate Campaign Conduct is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to promote ethical and professional conduct by candidates for judicial office, including through statutory change, promulgation or modification of canons of judicial ethics, improving mechanisms for the enforcement of the canons, and promotion of mechanisms encouraging voluntary compliance with ethics provisions by candidates for judicial office.

Findings

The task force has not yet made any findings. In order to address the wide range of topics covered by "campaign conduct," two working groups were formed: (1) a working group focusing on the decision in *Republican Party of Minnesota v. White* (2002) 536 U.S. 765 and charged with addressing possible amendments to the Code of Judicial Ethics and the disqualification provisions in the Code of Civil Procedure (the *White* Working Group), and (2) a working group charged with addressing the types of campaign conduct that are permissible and desirable (the Best Practices Working Group). Many of the issues addressed by the working groups are related or overlap, so each working group's final recommendations or findings require input from the other group. Thus, each working group made preliminary recommendations that were considered by the full task force at its April 30, 2008, meeting. The working groups will further refine their preliminary recommendations in light of the full task force meeting. Through this process, the task force will develop a set of final recommendations that are comprehensive and internally consistent.

Background

Problem Statement

Other states are experiencing contentious judicial elections in which candidates and third-party interest groups are spending huge amounts of money and engaging in negative, unethical campaign conduct. As a result, judicial elections are beginning to resemble elections for political office. The Task Force on Judicial Candidate Campaign Conduct is seeking ways to avoid such divisive and controversial judicial elections in California by promoting ethical campaign conduct.

Methodology and Process for Exploring Issues and Reaching Solutions

Establish working groups

Based on the wide range of topics to be addressed by the task force, the chair established two working groups: (1) a working group charged with considering whether the task force should recommend amendments to the California Code of Judicial Ethics or the disqualification provisions in the Code of Civil Procedure in response to *Republican Party of Minnesota v. White* (2002) 536 U.S. 765 and its progeny (the *White* Working Group; and (2) a working group charged with addressing what types of campaign conduct are permissible and desirable (the Best Practices Working Group).

As to the latter, the mere fact that certain conduct is allowed under the Code of Judicial Ethics does not mean that engaging in that conduct is prudent. Thus, the Best Practice Working Group is focusing on recommending practices that will enhance the impartiality and integrity of the judiciary, which will in turn promote public trust and confidence. Given the broad range of issues included in this working group's charge, the chair appointed six subcommittees covering the following topics:

- Judicial candidate questionnaires;
- Campaign contributions;
- Slate mailers, endorsements, and misrepresentations;
- Voluntary judicial campaign oversight committees;
- Public comment on pending cases; and
- Candidate training and advisory opinions.

Members of the working groups identified topics requiring research and made recommendations to the full task force, but the task force has not yet officially voted on the recommendations.

Meetings
To date, the full task force has held two in-person meetings: September 11, 2007, and April 30, 2008. In addition, the *White* Working Group met in person on October 29, 2007, and the Best Practices Working Group met on November 5, 2007, and January 31, 2008. The subcommittees of the Best Practices Working Group each have met once or twice telephonically.

Resources
Task force members have reviewed numerous articles and publications and spoken with several judges who have been involved in judicial elections.

Consultant
Charles Geyh, a national expert on judicial independence, accountability, administration and ethics, serves as consultant to the task force. Mr. Geyh has been a law professor at Indiana University since 1998. He is the author of *When Courts and Congress Collide: The Struggle for Control of America's Judicial System* (University of Michigan Press, 2006) and co-author of *Judicial Conduct and Ethics* (4th ed., Lexis Law Publishing, 2007) with James Alfini, Steven Lubet, and Jeffrey Shaman. In addition, Mr. Geyh was coreporter to the ABA Joint Commission to Evaluate the Model Code of Judicial Conduct.

Preliminary Recommendations

The task force's recommendations to date are set forth below and are presented by working group.

White Working Group

Methods and procedures
This seven-member working group met in person once and identified the issues to be addressed pertaining to amendments to the Code of Judicial Ethics and the Code of Civil Procedure as a result of *White*. The working group's recommendations were presented to the full task force at a meeting on April 30, 2008.

Summary of findings, recommendations, and considerations
The *White* Working Group began by analyzing the *White* case, in which the U.S. Supreme Court in 2002 held unconstitutional a clause in the Minnesota code of judicial conduct that prohibited judicial candidates from announcing their views on disputed legal and political issues. This clause is known as the "announce clause." The working group noted that California does not have an announce clause; rather, canon 5B contains the "commit clause," which provides that a judicial candidate must not "make statements to the electorate or the appointing authority that commit the candidate with respect to cases, controversies, or issues that could come before the courts." The *White* case did not address the commit clause. A third clause, known as the "pledges and promises clause" and also absent from the California code, states that a candidate shall not "make pledges or promises of conduct in office other than the faithful and impartial performance of the duties of the office." The *White* case also did not address the pledges and promises clause.

The working group concluded that *White* should be interpreted narrowly. Consistent with that conclusion, members observed that the California Supreme Court reacted conservatively to *White* when it amended the Code of Judicial Ethics in 2003. The court amended canon 5B to delete the phrase "appear to commit" from the commit clause. Prior to that amendment, the canon prohibited candidates from making statements that "commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts." The working group does not believe that any other changes to the canons are mandated by *White*. Nevertheless, the group recommended to the task force the following changes:

- Adding a definition of "impartiality" to the code;
- Amending the code to include hortatory provisions saying that judges are encouraged to (1) take an active role in educating the community on the meaning of an impartial judiciary; and (2) discuss certain topics whenever appropriate, such as qualifications of candidates, impartiality, and the courts;

- Amending the code to provide that a judge is disqualified if he or she makes a public statement that commits the judge to reach a particular result in a certain type of proceeding or controversy; and
- Adding commentary to the code noting that unlike in California, the 2007 ABA Model Code contains a "pledges and promises" clause, and that because the California code contains the commit clause, it is unnecessary to add the pledges and promises clause.

Task force members are aware that any changes to the Code of Judicial Ethics must be adopted by the Supreme Court, which typically refers proposed amendments to its Advisory Committee on the Code of Judicial Ethics.

Definition of "impartiality"

On the working group's recommendation, the task force agreed that the term "impartiality" should be defined in the Code of Judicial Ethics because it is used frequently in the canons. In contrast to the California code, the 2007 ABA Model Code of Judicial Conduct includes the following definition of "impartiality" in its terminology section:

> "Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge.

The definition of "impartiality" tracks the analysis of that term in the majority opinion of *White* by couching the definition in terms of an absence of bias or prejudice toward individuals and maintaining an open mind on issues. Although the task force has not voted on the final version of this proposal, members agreed that the definition should reference bias against parties as well as open-mindedness. They also determined that advisory committee commentary should be added to the code setting forth the historical basis of the term.

Hortatory provisions

The task force agreed with the working group that the Supreme Court should add hortatory provisions to the code that would encourage judges to (1) take an active role in educating the community on the meaning of an impartial judiciary, and (2) discuss certain topics such as qualifications, impartiality, or the courts. Some state codes and the ABA Model Code of Judicial Conduct explicitly encourage certain judicial conduct. For example, canon 4 of the Florida Code of Judicial Conduct states: "A judge is encouraged to engage in activities to improve the law, the legal system, and the administration of justice." The model code, in comment 2 to rule 2.1, provides: "Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system."

Although the task force has not agreed on the exact language or where to put the provisions, members are considering the following working group recommendations:

- Amend the commentary to canon 2A to include the statement:

  Public confidence in the judiciary depends, in part, on the public's understanding of the judicial role. Although it is not a duty of judicial office, a judge is encouraged to take an active role in educating the public on the meaning and importance of an impartial judiciary.

- Amend the commentary to canon 4B as follows:

  As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system, and the administration of justice, including revision of substantive and procedural law, ~~and~~ improvement of criminal and juvenile justice, and education of the public on the meaning and importance of an impartial judiciary. To the extent that time permits, a judge ~~may~~ is encouraged to do so, either independently or through a bar or judicial association or other group dedicated to the improvement of the law.

- Amend the commentary to canon 5B to include the statement:

  When making statements to the electorate, a judge is encouraged to discuss matters such as the judge's qualifications for office and the meaning and importance of an impartial judiciary.

The task force agreed that wherever these provisions are located, it should be made clear that they do not impose any obligation on judges.

Disqualification

In response to *White*, the ABA added a provision to the model code in 2003 under which a judge is disqualified if he or she made public statements during a judicial campaign that commit or appear to commit the judge to a particular result regarding an issue that is before the court. Rule 2.11(A)(5) of the model code provides that a judge is disqualified if:

> [t]he judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

On the working group's recommendation, the task force agreed with this approach. Some members expressed concern, however, about including the phrase "appears to commit" given that the phrase was deleted from canon 5B after *White* as overinclusive. It was noted that although the model code also deleted the phrase from the commit clause after *White*, it is included in the new disqualification rule. Members will further consider whether to track the language of the model code or frame the disqualification provision in terms of whether the candidate made statements that reflect a lack of impartiality. The task force did conclude, however, that the provision should be placed in the Code of Judicial Ethics, not in the disqualification provisions of the Code of Civil Procedure.

Commentary regarding commit clause

California does not have the "pledges and promises" clause that existed in the model code until the 2003 revisions and that still exists in many state codes. The U.S. Supreme Court specifically declined to address the constitutionality of this clause in *White*.

When it considered revisions to the Code of Judicial Ethics after *White*, the Supreme Court Advisory Committee on the Code of Judicial Ethics decided against recommending to the court that it add the "pledges and promises" clause to the code. Task force members agreed that there is no need to adopt a reference to pledges or promises. They concluded, however, that it may be instructive to add to the commentary following canon 5B a sentence noting that the California code does not include the pledges and promises clause because it is superfluous. The task force has not yet voted on the exact language of the proposed commentary.

Best Practices Working Group

Methods and procedures

The Best Practices Working Group, composed of 11 members, met in person twice. At the second meeting, the chair appointed six subcommittees to address various issues identified by the working group. For the meeting on April 30, each of the six subcommittees submitted reports to be considered by the full task force.

Summary of findings, recommendations, and considerations

Public comment on pending cases

The Subcommittee on Public Comment on Pending Cases was asked to consider and make recommendations regarding the following issues:

- Should canon 3B(9) and rule 1-700 of the Rules of Professional Conduct be amended to include attorney candidates for judicial office?
- Should canon 3B(9) be amended to allow a judge to respond to an attack?
- Should a judge candidate respond to an attack concerning a pending or impending proceeding through a third party, such as an advisory or oversight committee?

Including attorney candidates. Canon 3B(9) prohibits a judge from making any public comment about a pending or impending proceeding in any court, or any nonpublic comment that might substantially interfere with a fair trial or hearing. Rule 1-700 states that a member who is a candidate for judicial office shall comply with canon 5 of the Code of Judicial Ethics.

Most of the subcommittee members agreed that the prohibition against public comment on pending cases should be extended to attorneys who are judicial candidates because this would help create a level playing field. The task force voted, however, not to extend the prohibition because of First Amendment concerns.

Allowing a judge to respond to an attack. The subcommittee discussed amending canon 3B(9) to allow a judge to respond to an attack and determined that amending the advisory committee commentary to canon 3B(9) to define the term "public comment" meets this need without offending the underlying ethical tenet. When a judge responds to an attack, it may give the appearance that the judge has resorted to extrajudicial means to defend the judge's own rulings, which negatively affects the perception of fairness. Because there is little direction on this issue, the most judges err on the side of caution and do not make public statements.

The task force has not decided exactly what language to recommend or where it should be placed, but it is considering recommending the following definitions of two phrases in the advisory committee commentary to canon 3B(9):

> <u>"Making statements in the course of their official duties" and "explaining for public information the procedures of the court" include quoting any statement made in a court proceeding open to the public, providing an official transcript of a court proceeding open to the public, and identifying and explaining the rules of court and procedures used in any decision rendered by the judge.</u>

Responding to an attack through a third party. The subcommittee disagreed on whether it would be a violation of canon 3B(9) for a judge to initiate a public response to an attack on the judge through a third party, such as an oversight committee. They agreed, however, that a third party response initiated by a judge would have the same negative impact on public perception whether or not prohibited by canon 3B(9). Even an independent committee created for the sole purpose of responding to attacks during elections would appear to the public to be self-serving. An independent standing committee with no judicial members that responds to all types of inappropriate or unfair criticism of the judicial system or of judges, however, would have more credibility. The task force is therefore considering recommending that each court, working with county bar associations, create an independent standing committee that can respond to

inappropriate criticisms of judges, judicial decisions, or the judicial system, whether in the election context or outside of it.

Judicial questionnaires

The Subcommittee on Judicial Questionnaires considered various options for responding to judicial campaign questionnaires and recommended that the task force develop (1) a model letter in lieu of a response and (2) a model questionnaire to replace a special interest questionnaire.

The task force agreed that model letters appear to be an effective way to respond to special interest questionnaires without exposing the respondent to attacks for refusing to answer the questions. These letters clearly state the reasons a judicial candidate should not express personal views on "hot button" issues and emphasize the importance of impartial and independent application of the law to each case that comes before the court. The task force will further consider the exact wording of a model letter to recommend.

The task force also agreed that use of a model questionnaire in lieu of interest group questionnaires is an effective way to provide voters with a clear understanding of a judicial candidate's background, qualifications, and suitability for the bench without calling into question his or her impartiality.

Members discussed the desirability of enlisting an impartial national organization, such as the League of Women Voters, to support the use of these model responses and questionnaires. The task force will consider this proposal further.

To provide a comprehensive approach regarding responses to questionnaires, the task force is considering distribution to judges of a memorandum by the National Ad Hoc Advisory Committee on Judicial Campaign Oversight with advice on how to respond. Among other things, the memorandum warns against using the preprinted answers provided on the questionnaire, suggests responding with a letter, and recommends distinguishing general interest, nonadvocacy groups from special interest advocacy groups.

Judicial candidate training and advisory opinions

The Subcommittee on Candidate Training and Advisory Opinions was asked to consider and make recommendations regarding the following issues:

- Whether a canon or rule of court should require all judicial candidates to undergo training about judicial campaign conduct;
- Creation of a "hotline" to provide ethics advice to judicial candidates on campaign conduct; and
- Whether to develop brochures to educate candidates about how judicial elections differ from other elections and appropriate campaign conduct.

Mandatory training. The subcommittee concluded that all candidates for judicial office should be required to complete training about ethical campaign conduct. In considering this issue, the committee noted that other states, including New York and Ohio, have mandatory judicial candidate ethics training. Task force members agreed that training would be beneficial but did not vote on whether the training should be mandatory or voluntary. If the task force agrees that it should be mandatory, it will consider whether to add the requirement to the Code of Judicial Ethics, which is adopted by the Supreme Court, or to the California Business and Professions Code, which will ensure that it will apply to attorney candidates.

The subcommittee also recommended that the training be available online so that candidates in remote counties need not travel to attend a course. Members suggested that the AOC's Education Division collaborate with the State Bar to develop an online program. In addition to online training, the program should be offered regionally and should have an interactive component so participants can ask questions. The task force has not voted on these proposals.

Creation of a hotline. In considering whether a hotline should be created to provide advice to all judicial candidates on campaign conduct, the subcommittee noted that the CJA's Judicial Ethics Committee operates a hotline that offers ethics advice to judicial officers and candidates for judicial office. It is rare, however, for an attorney candidate to contact the hotline for ethics advice. Given that the CJA already provides ethics advice to all candidates for judicial office, the subcommittee agreed that efforts should be made to publicize the existence of the CJA's service rather than create a new hotline. Task force members generally agreed but did not vote on this proposal.

Development of brochures to educate the candidates. The subcommittee concluded that brochures should be developed and distributed to candidates to educate them about how judicial elections differ from other elections and what is appropriate campaign conduct. The subcommittee recommended that the brochures be provided to campaign consultants and managers as well as county registrars for distribution to candidates. The task force agreed with these recommendations.

Campaign contributions

The Subcommittee on Campaign Contributions was asked to consider whether recommendations should be made concerning the following matters, some of which are—as identified—also being considered by the Task Force on Judicial Campaign Finance:[6]

[6] Committee counsel for the two affected task forces regularly meet to discuss potential areas of overlap and to ensure that duplicative or contradictory recommendations are not made.

- Should canon 3E(2) be clarified regarding how sitting judges comply with campaign contribution disclosure requirements in particular cases? [7]
- Should there be mandatory disqualification rules, similar to those in the model code, after a judge candidate receives a campaign contribution of a certain amount? [8]
- Should there be restrictions on contributions from attorneys who appear before a judge candidate? [9]
- Should canon 5 be modified to prohibit judicial candidates from personally soliciting or accepting campaign contributions except through an authorized campaign committee?

Compliance with disclosure requirements. Canon 3E(2) provides: "In all trial court proceedings, a judge shall disclose on the record information that is reasonably relevant to the question of disqualification under Code of Civil Procedure section 170.1, even if the judge believes there is no actual basis for disqualification." In determining whether a particular campaign contribution amount should trigger a disclosure requirement, the subcommittee recommended to the task force that a judge should disclose on the record any contribution of $100 or more when the contributor is involved in the case before the judge. That figure is the threshold amount required for disclosure/reporting of campaign contributions and expenditures to the California Fair Political Practices Commission (FPPC). (See Gov. Code, § 84211(f).) The subcommittee further agreed that the amount should mirror the figure set by the FPPC reporting requirements, which would allow for an increase if Government Code section 84211(f) is later amended. This language would be placed in the advisory committee commentary following canon 3E(2), but there would be a cross-reference in canon 5 (which addresses political activity) to the proposed new commentary to canon 3E(2) because candidates may look to canon 5 for information on campaign conduct.

Regarding how long a judge must continue to disclose a contribution to parties appearing before him or her, the subcommittee recommended that, except for unusually high contributions, the required disclosure period should terminate one year after a judicial election. The subcommittee also concluded that judges should be required to maintain a list of contributors of $100 or more and that they should update the list at least weekly. These provisions would be placed in the canon 3E(2) commentary.

Finally, the subcommittee considered whether the list should be available for public inspection. The members recognized that there are drawbacks to having a list available

[7] This issue is distinct from the issue of sitting judges' compliance with statutory provisions regarding the disclosure/reporting of campaign contributions and expenditures to local and state agencies; that issue is being considered by the Task Force on Judicial Campaign Finance.
[8] This issue is also being considered by the Task Force on Judicial Campaign Finance.
[9] This issue, as well as the issue of recommending contribution limits applicable to judicial candidates generally, is also being considered by the Task Force on Judicial Campaign Finance.

for viewing because courtroom users, particularly attorneys, may feel compelled to contribute. For practical reasons, however, the subcommittee concluded that a judge should be permitted to comply with disclosure requirements by posting a list in the courtroom and, on the record, referring courtroom participants to the list.

The task force did not vote on these recommendations, but no opposition was expressed to any of them.

Mandatory disqualification based on threshold amount. The subcommittee considered whether there should be a threshold monetary amount at which a judge is mandatorily disqualified from hearing a case involving a person who has contributed to the judge's campaign. Rule 2.11(A)(4) of the model code mandates disqualification if a judge accepts a campaign contribution of a certain amount, leaving the amount for each state to fill in.

The subcommittee determined not to recommend a threshold amount at which disqualification is mandatory because (1) setting a threshold amount may unfairly affect judge candidates who are challenged by attorney candidates; (2) campaign contribution amounts vary widely among the counties, so a universal figure will not work for all counties; and (3) the overall amount a candidate must raise depends in large part on the cost of the ballot statement, which also varies widely among counties. Instead, the committee concluded that Code of Civil Procedure section 170.1(a)(6)(A) provides adequate protection to litigants. It provides that a judge is disqualified if (1) the judge believes his or her recusal would further the interests of justice, (2) the judge believes there is a substantial doubt as to his or her capacity to be impartial, or (3) a person aware of the facts might reasonably entertain a doubt that the judge would be able to be impartial. After considering the subcommittee's conclusion, the task force was divided on whether to recommend disqualification based on a threshold amount. The task force, in consultation with the Task Force on Judicial Campaign Finance, will consider the issue further.

Restrictions on contributions from attorneys who appear before a judge candidate. The subcommittee determined that restricting contributions from attorneys who appear before a judge candidate is inadvisable because it would impair a sitting judge's ability to raise money while not subjecting attorney challengers to the same restriction. In addition, to the extent that campaign contributions to judicial candidates may create the appearance that the successful candidate is beholden to the contributors, this concern can be addressed through disclosure and disqualification requirements. Therefore, the subcommittee rejected a proposal to restrict contributions from attorneys who appear before a judge candidate. The task force did not vote on this recommendation.

Prohibiting judicial candidates from personally soliciting or accepting campaign contributions except through an authorized campaign committee. The subcommittee noted that at least one federal appellate court has held unconstitutional a provision in the Georgia Code of Judicial Conduct that prohibits judicial candidates from personally soliciting campaign funds. (*Weaver v. Bonner* (11th Cir. 2002) 309 F.3d 1312.) Because the constitutionality of such a provision is questionable and because this would unfairly restrict a judge's ability to raise funds, the committee rejected this proposal.

Slate mailers, endorsements, and misrepresentations

The Subcommittee on Slate Mailers, Endorsements, and Misrepresentations was asked to consider whether recommendations should be made concerning the following matters:

- Whether the disclaimer requirement of Government Code section 84305.5(a)(2) should be strengthened, and whether a different disclaimer should be required if a candidate has been added to a slate without his or her permission;
- Standards for candidates to follow regarding slate mailers, including when a slate title is misleading;
- Standards for candidates to follow regarding endorsements;
- Whether canon 5 should be modified to prohibit judicial candidates from publicly identifying themselves as members of a political organization; running on a slate associated with a political organization; or seeking, accepting, or using endorsements from political organizations;
- Standards regarding "truth in advertising" for judicial campaigns;
- Whether the canons should be amended to require candidates to review and approve campaign statements and materials produced by campaign committees and supporters; and
- Whether canon 6D should be modified regarding improper use of the title "temporary judge" in campaign materials and whether to enhance training materials for temporary judges under rule 2.812(c) of the California Rules of Court.[10]

Strengthening slate mailer disclaimer. A slate mailer is defined as a "mass mailing which supports or opposes a total of four or more candidates or ballot measures." (Gov. Code, § 82048.3.) The mailers generally contain endorsements or recommendations for various partisan and nonpartisan offices, including judicial offices, and ballot measures. A candidate can pay to be placed on a mailer, or an organization publishing the mailer can list a candidate without the candidate's permission. One ethical concern with these mailers is the perception that a candidate listed on the mailer is endorsing the other candidates or measures on the mailer. Canon 5 requires judges to refrain from

[10] The task force did not discuss this subcommittee's recommendations at the April 30, 2008, meeting because there was not enough time. Therefore, this section sets forth only the recommendations of the subcommittee.

inappropriate political activity and canon 5A(2) prohibits judges from publicly endorsing candidates for nonjudicial office. The judicial candidate has no control over the message or the presence in the mailer of other candidates, whose views may not be consistent with notions of judicial impartiality.

Government Code section 84305.5(a)(2) requires that a notice be placed on slate mailers stating: "Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, not does it imply endorsement of, or opposition to, any issues set forth in this mailer." The same section also requires inclusion of the admonition that the sender of the mailer is "Not an Official Political Party Organization."

The subcommittee recommends several enhancements to the statute that will further remove doubt about the meaning of judicial candidate participation. The statute should be amended to cite explicitly to canon 5 and remind the reader that judges are not permitted to endorse partisan political candidates or causes. The subcommittee also recommends that the statute be amended to require disclosure when a candidate is placed on the mailer without his or her consent. Finally, the statute, which now applies only to an "organization or committee primarily formed to support or oppose one or more ballot measures," should be modified so that it applies to *all* slate mailers that may include judicial candidates.

Standards regarding slate mailers. The subcommittee agreed that judicial campaign instructional material should be developed to inform candidates that they may run afoul of certain canons if they allow their names to be placed on mailers espousing certain views. Candidates should be instructed that not only the title of the mailer, but the context, layout, and inclusion of other messages and individuals in the mailer may combine to make the mailer an inappropriate vehicle for a judicial race. Therefore, the candidate should insist on inspection of the proposed mailer before agreeing to purchase a place on it.

Standards regarding endorsements. The subcommittee recommends that all judicial candidates refrain voluntarily from the use of any endorsement unless permission has been confirmed in a document signed by the endorser. In addition, the candidate should immediately honor any request, oral or written, to withdraw an endorsement. These best practices would be included in precampaign instructional material and in voluntary pledges signed by the candidates (discussed below).

Regarding the type of individuals or entities that a candidate should accept as endorsers, elected public officials and persons holding partisan political office, such as a local senator, are permissible. The candidate should be alerted, however, to the consequence that an endorsement could lead to subsequent recusals in the courtroom.

Amending canon 5 regarding association with political organizations. The subcommittee concluded that canon 5 should not be amended to preclude a candidate from referencing political party affiliations. As noted above, a candidate should be permitted to accept an endorsement from a person holding partisan political office.

Standards regarding "truth in advertising" for judicial campaigns. Canon 5B(2) provides that a candidate shall not "knowingly, or with reckless disregard for the truth, misrepresent the identity, qualifications, present position, or any other fact concerning the candidate or his or her opponent." To promote compliance with this canon, the subcommittee recommends that the precampaign instructional material discussed above include information about the importance of truth in advertising. In addition, the voluntary pledges signed by the candidates should include a commitment to the goal of truth in advertising.

Amending the canons to require candidates to review and approve campaign statements and materials produced by campaign committees and supporters. The subcommittee recommends that canon 5 or its commentary be amended to place an affirmative duty on the candidate to take reasonable measures to control the actions of campaign supporters and the content of campaign statements. This would include a duty to review and approve campaign statements and materials produced by campaign committees and supporters. Rule 4.2(A)(4) of the model code requires that a candidate "take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities, other than those described [elsewhere in the rule as acceptable]."

Use of the title "temporary judge." The subcommittee considered the issue of misuse of the title or position of "temporary judge." Typically, the misuse involves an attorney allowing the title to be used in campaign literature or in a ballot statement. In addition to the mandatory ethics training for temporary judges under rule 2.812(b) of the California Rules of Court, the committee recommends that a letter from the local court containing a set of instructions and explanations about the misuse of the title be provided to the voter registrar before each judicial election cycle for use in the event that issues arise concerning the ballot designation. Candidate instructional materials should be standardized and made widely available before the campaign cycle.

Canon 6D(8)(c) allows an attorney to use his or her judicial title to "show [his or her] qualifications." This open-ended statement has resulted in attorneys using the title as if it were an occupation, such as "deputy district attorney." Canon 6D(9)(b) permits use of the title or service in a variety of employment application scenarios, including when the title or service is contained in a "descriptive statement submitted in connection with an application . . . for appointment or *election* to a judicial position" (italics added). The subcommittee recommends that canon 6 be revisited with a view toward clearing up ambiguities on how the title may be used.

Finally, unsuccessful attorney candidates who engage in misconduct are under the jurisdiction of the State Bar, not the Commission on Judicial Performance (CJP). According to State Bar officials, no California attorney has ever faced discipline for alleged misconduct that occurred during a judicial campaign. Consequently, the subcommittee recommends that emphasis be placed on voluntary oversight committees, discussed below.

Voluntary codes of conduct and judicial campaign conduct committees[11]
There is a growing movement to establish judicial campaign conduct committees that encourage and support appropriate conduct by judicial candidates. These committees educate candidates about appropriate campaign conduct and criticize inappropriate campaign conduct. Unlike the CJP, they are designed to address allegations of misconduct on an expedited basis.

In considering the development of such committees in California, the Subcommittee on Voluntary Judicial Campaign Codes of Conduct and Oversight Committees agreed that one of the greatest threats to judicial independence comes from third-party and special interest group involvement in judicial elections. The subcommittee believes that California should be in the forefront in aggressively addressing the conduct of special interest groups in judicial elections in addition to ensuring that candidates conduct themselves and their campaigns in a manner that ensures judicial integrity, confidence in the judicial process, and judicial independence.

To this end, the subcommittee determined that the most effective approach is to create a uniform statewide standard of conduct and a single oversight entity that addresses the conduct of all participants, including candidates and special interest groups, in judicial elections. Such a uniform statewide approach would cover both superior court and appellate court retention elections. Ideally, the Legislature would establish a statewide oversight committee with authority to govern campaign conduct not only as it relates to judicial candidates' conduct but also as it relates to special interest group involvement in judicial elections.

One concern with a legislatively created conduct committee is that there is potential liability based on First Amendment violations. Any disciplinary action or enforcement by an official committee may be tantamount to state action that limits political speech. In fact, merely issuing a public statement criticizing a candidate's comments could be interpreted as an attempt to inhibit political speech. Therefore, the National Ad Hoc Advisory Committee on Judicial Campaign Conduct recommends the establishment of

[11] The task force did not discuss this subcommittee's recommendations at the April 30, 2008, meeting because there was not enough time. Therefore, this section sets forth only the recommendations of the subcommittee.

unofficial committees, the goals of which would be to educate candidates about appropriate campaign conduct and to criticize inappropriate conduct.

Based on this recommendation and the concern about liability, the subcommittee considered an alternative approach involving the creation of a statewide entity that is not an official entity of the judicial, legislative, or executive branches. This entity would develop a statewide voluntary code of campaign conduct and the state entity's "oversight" would be accomplished by a "speech vs. speech" approach. That is, when deemed appropriate, the oversight committee would publicly comment on the conduct of participants in the judicial election process. In addition, the oversight entity could choose to speak with the participants about questionable conduct in an attempt to influence the conduct of the campaign but without the oversight entity unnecessarily inserting itself into the judicial campaign.

Composition of the oversight committee would need to be balanced because its effectiveness rests largely on its credibility with the public, the judicial candidates, and special interest groups. The committee should be nonpartisan and include well-respected members of the community such as lawyers, media experts, former judges, private citizens, ethics experts, and members of the clergy. The committee must be independent, self-governing, self-perpetuating, and funded by sources not identified with any group having an interest in judicial election outcomes, e.g., judges, lawyers, or political groups. The statewide entity would not supplant local oversight committees with their own local codes of conduct. Where there is no local code or oversight committee, however, the statewide entity would be available.

Another approach considered by the subcommittee would involve the creation of a statewide entity that would develop model standards for establishing local oversight committees and a model campaign code of conduct to be used by the local oversight committees. This statewide entity would encourage local entities to establish oversight committees and adopt the model campaign conduct codes. The statewide group would provide technical assistance to local entities on implementing the codes and oversight committees and ongoing support for the local entities. It would also engage local groups such as the League of Women Voters, judicial officers, State Bar officials, legislators, and others to initiate education and training at the local level to be able to implement oversight committees.

Next Steps for Task Force

At the full task force meeting on April 30, 2008, the preliminary recommendations of the *White* Working Group and the subcommittees of the Best Practices Working Group were presented for discussion. The next steps are for the *White* Working Group and the Best Practices Working Group's subcommittees to meet independently to reconsider their recommendations in light of matters discussed during the meeting. The working group and the committees will then redraft their recommendations for consideration by the full task force at its next meeting in September 2008.

Task Force on Judicial Campaign Finance

Executive Summary

Charge

The Task Force on Judicial Campaign Finance is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to better regulate contributions to, financing of, or spending by candidates on campaigns for judicial office or to improve or better regulate judicial campaign advertising, including through enhanced disclosure requirements.

Findings

The task force has not yet made any findings. The broad issue of campaign finance has a number of related subissues, which interact and interconnect in complex ways. As a result, the task force has determined that it is neither efficient nor advisable to make recommendations or findings piecemeal. Rather, the task force plans first to review and consider all of the subissues, after which it will present a comprehensive, internally consistent package of recommendations and findings. Accordingly, this report focuses on issues that the task force has considered to date and the recommendations that are being considered in connection with those issues (including arguments both for and against the potential recommendations).

Recommendations for Immediate Implementation

The task force has no recommendations for immediate implementation.

Background

Problem Statement

Recent years have seen a dramatic increase nationwide in the number of factors that threaten to undermine both the impartiality of state judicial branches and the public's trust and confidence in their state judiciaries generally. A number of these factors relate in some way to the presence and influence of large sums of money in judicial elections. While private sector contributions—and the resulting influence with subsequent officeholders that those contributions may buy—are considered the acceptable norm in legislative and executive branch races, the unique role of judicial officers as impartial decision makers makes the presence of large monetary contributions from potentially interested parties problematic, if not in terms of actually influencing the outcome of legal proceedings, then certainly in terms of the public's perception of the impartiality (or lack thereof) of the judicial branch. Specific examples of finance-based factors that have or could have a negative effect on the actual or perceived impartiality of a state's judicial branch include:

- The unfettered ability of parties or other interests—e.g., attorneys, law firms, corporations, or unions—to make large contributions to judicial candidates before whom they are likely to appear;
- A demonstrated correlation between parties and interests providing monetary support to judicial officers and those same parties/interests later prevailing in cases before the judicial officers whom they supported;
- A dramatic rise in "independent expenditures"—i.e., expenditures not directly made by a candidate and often funded by corporate or other moneyed interests—designed to affect the outcome of judicial elections; and
- A reported increase in the public's perception that monetary contributions can and do affect judicial decisionmaking.

On this last point, nationwide polls conducted by Greenberg Quinlan Rosner Research and American Viewpoint, reported by the Justice at Stake Campaign in 2002, showed that 76 percent of voters—and, remarkably, 26 percent of state court judges themselves—believe that campaign contributions made to judges have at least some influence on their decisions. Those same polls also showed that more than two-thirds of American voters (67 percent overall)—69 percent of Democrats and 64 percent of Republicans—feel that "individuals or groups who give money to judicial candidates often get favorable treatment." Thus, it is no stretch to say that both the potential for, and the actual presence of, large sums of money spent in connection with judicial elections raises a significant concern that the public will believe that "justice is for sale."

On the other hand, it is important also to consider the factors that may make large contributions to judicial candidates necessary, particularly in light of California's system of contested and retention elections. As an example, candidates at the superior court level

who wish to have their local registrar of voters publish a candidate statement—widely agreed to be a basic necessity for mounting a successful campaign—are required, under the California Elections Code, to pay a fee that varies with the size of their county and the number of languages in which they want the statement to be printed. In larger counties, this fee alone can create the need for significant fundraising by judicial candidates. For example, in 2007, the cost of a candidate statement in Los Angeles County—where printing such statements in at least English and Spanish is considered to be a political necessity—was $45,000 per candidate, per language. Thus, in Los Angeles County, a candidate for judicial office needs to have funds totaling at least $90,000 merely to *enter* the race, to say nothing of the funds needed for actual campaigning. Unless a candidate is independently wealthy, he or she will have to resort to political contributors to amass funds of that magnitude.

The ability to raise potentially large sums of money is also a necessity at the appellate level, where candidates do not run opposed but rather stand for retention elections. Under current California law, it is entirely possible for an appellate justice to become the target of "attack" efforts by so-called "independent expenditure" groups. These groups may expend large sums of money on advertising and other efforts designed to unseat a sitting justice, often with little advanced warning to the justice. Because judicial officers—unlike other state officeholders—typically do not engage in year-round fundraising, justices targeted in this fashion may find themselves in the position of having to raise significant funds for counter-advertising and other campaigning in a very short period of time. Hence, there remains a need for some way to infuse money into judicial campaigns.

The challenge facing the task force, then, is to craft a series of recommendations that will hopefully lead to a system that will allow for the necessary funding of judicial campaigns (at both the trial and appellate court levels) while also bolstering the public's trust and confidence in an impartial judiciary, free from undue influence by outside moneyed interests.

Methodology and Process for Exploring Issues and Reaching Solutions

Establish working groups

Because of the task force's two-pronged charge—focusing both on contributions to and expenditures by judicial candidates and on campaign advertising and financial reporting—its chair established two separate working groups.

Working Group 1, which is chaired by Judge Heather D. Morse, of the Superior Court of Santa Cruz County, is responsible for proposals to better regulate contributions to, financing of, or spending by candidates on campaigns for judicial office.

Working Group 2, which is chaired by Judge Gail A. Andler, of the Superior Court of Orange County, is responsible for proposals to improve or better regulate judicial

campaign advertising and financial reporting, including through enhanced disclosure requirements.

Together, the task force and working group chairs, task force staff, and the task force's consultant identified which issues should be considered by the task force and then assigned each issue to the appropriate working group. The working groups have met telephonically, with the goal of arriving at tentative recommendations to take to the full task force. The task force, after considering the reports and tentative recommendations of the working groups, will come to agreement on a comprehensive package of recommendations to make to the CIC steering committee.

Meetings
To date, the task force has held four in-person meetings: September 11 and November 27, 2006, and February 4 and April 28, 2008. Each working group has met telephonically three to four times and communicates regularly via e-mail.

Resources
Numerous documents, including law review and newspaper articles, data compilations, and published cases, have been posted on the task force's Moodle site for review and consideration.

In addition, the task force has, to date, heard from four guest speakers: campaign treasurer Tim Fields, campaign treasurers Bob and Helen Shepherd, and Missouri State Supreme Court Judge Michael A. Wolff.

Consultant
Deborah Goldberg serves as consultant to the task force. Ms. Goldberg is the program director for the Democracy Program at the Brennan Center for Justice, a nonpartisan public policy and law institute that is a part of the New York University School of Law. Ms. Goldberg is the principal author and editor of *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws*, and before joining the Brennan Center, she was in private practice, concentrating on environmental law. She is a graduate of Harvard Law School and served as law clerk to Justice Stephen G. Breyer, then on the U.S. Court of Appeals for the First Circuit, and to Judge Constance Baker Motley on the U.S. District Court for the Southern District of New York.

Collaboration with other groups
Lead staff has met informally with lead staff from the other task forces on a number of occasions to discuss potential areas of overlap. In particular, there is a significant possibility of overlap with the work being done by the Subcommittee on Campaign Contributions, a part of the Task Force on Judicial Candidate Campaign Conduct.

Issues Considered to Date

In the absence of preliminary recommendations, below are the issues that the task force has considered to date, along with possible recommendations concerning those issues. The task force has identified factors that argue both for and against each potential recommendation, and summaries of those factors are set forth below. Where appropriate, the task force has also identified practical and logistical concerns relating to each potential recommendation.

Issues Pertaining Primarily to Contribution Limits

Under California law, there currently are no limits on the amount one can contribute to a judicial candidate. These issues therefore focus on whether contribution limits are desirable and whether some other alternative might accomplish the same purpose.

Imposition of statutory contribution limits

The task force considered whether to recommend statutory or other limits on contributions to judicial candidates by various persons or entities.

Factors in favor of imposing contribution limits

The lack of contribution limits could lead to a public perception that judges can be bought. Put another way, although it may not have happened yet in California, under current law there are no impediments to a special interest contributor (whether individual or entity) making a large contribution to a judicial candidate's campaign.

As noted above, data show that the public and sitting judges believe that contributions to judges, especially in large amounts, can affect judicial decisionmaking. Thus, even if not needed to prevent actual high-dollar spending in California, the lack of contribution limits might itself negatively affect the public's trust and confidence in an impartial judiciary. That is, the mere presence of contribution limits might enhance the public's perception of a judiciary free from outside moneyed influence.

National data show that the cost of campaigns is rising and that big spending is seeping down even to trial court races in some jurisdictions, especially where there are no contribution limits. Imposing contribution limits now, when they will not cut into fundraising, may make more sense than waiting until they are needed.

Factors against imposing contribution limits

It appears that most attempts to buy judges occur at the Supreme Court level. California's Supreme Court justices are subject only to nonpartisan retention elections, where large spending amounts arguably have less of an impact than they would in partisan or contested elections.

Because there is little public interest in judicial elections, particularly at the superior court level, they are usually not very expensive to run. Therefore, large contributions appear to be the exception. Also, when judicial races do wind up being expensive, it is generally

where there is an open seat election; where an incumbent runs against a challenger, the overall amount raised and spent tends to be low.

Data from recent FPPC hearings addressing the issue of independent expenditures show that where contribution limits are imposed, spending by independent expenditure groups rises dramatically, negatively affecting the public's ability to get accurate data on who is truly funding certain election-related efforts. In other words, imposing contribution limits can actually have a negative effect on the public's ability to "follow the money."

The benefit of contribution limits—i.e., enhancing the public's trust and confidence in an impartial judiciary that is unaffected by money—might be accomplished through other means (discussed below), such as mandatory disclosure to litigants of certain contributions and possible disqualification based on those contributions.

Practical and logistical considerations

Any potential statutory contribution limit must account for the fact that the cost of running a judicial election varies widely from county to county in California, based in part on the varying costs of the candidates' statements. Thus, limits could potentially be tied to county population or some other metric.

On a similar note, it is possible that the public's perception of the size of a contribution that would cause a judge to appear to lose impartiality would also vary from county to county. That is, a $2,000 contribution in a large county like Los Angeles—where it is very expensive to take even the basic steps necessary to initiate a campaign—might give the public no pause, while that contribution in a smaller county such as Alpine might seem far out of proportion to other contributions received.

There are also issues surrounding the timing of contributions. For example, the task force has discussed whether there would be value in limiting judges to receiving contributions only in a certain time frame near an election. Doing so could obviate the potential negative public perception were a judge to accept large monetary contributions years in advance of his or her next election.

Mandatory disclosure or disqualification

The task force considered whether to recommend, as an alternative to contribution limits, a system of mandatory disclosure to litigants and their counsel of—and possibly disqualification because of—contributions at a certain dollar amount.[12]

Factors in favor of mandatory disclosure

Mandatory disclosure could enhance public trust and confidence in an impartial judiciary without the need for contribution limits. For example, if the public knows that an affected litigant will be told of—and presumably have the chance to act on—a large contribution made to a judicial officer by the litigant's opponent or other interested party, then that

[12] As discussed above, these issues are also being considered by the Task Force on Judicial Candidate Campaign Conduct.

may be a sufficient check to convince the public that attempts to buy judges will not result in biased decisions.

Factors against mandatory disclosure
As compared to contribution limits, it is possible that mandatory disclosure alone (i.e., without mandatory disqualification) might not sufficiently convince the public that judicial decisionmaking will not be influenced by money. In recent instances in other states, judges have disclosed accepting millions of dollars from interested litigants or lobbies yet have not disqualified themselves. When the public becomes aware of extreme examples like this, trust and confidence in the integrity of judges as a whole declines.

Disclosure of contributions could be a logistical burden on the judges. Judges would need a system for monitoring contributions and ensuring disclosure under all required circumstances.

There is a question whether disclosure would sufficiently identify possible links between donors and litigants before a judge. For example, a litigant might not be a contributor, but a person or entity aligned with that litigant might be. In that instance, either the judge might not know to disclose the contribution, or the contribution list might not permit an interested member of the public to make the connection.

Factors in favor of mandatory disqualification
Mandatory disqualification, in conjunction with mandatory disclosure, might serve much the same function as contribution limits, i.e., it might enhance the public's confidence that the system has safeguards to prevent judicial decisionmaking from being influenced by monetary contributions.

Factors against mandatory disqualification
Given the Code of Judicial Ethics, which already require a judge to disqualify himself or herself where there would be an appearance of impropriety (and to disclose certain financial interests), judicial officers may argue that mandatory disqualification is unnecessary.

Mandatory disqualification also carries with it the possibility of a litigant "gaming" the system, i.e., making a large contribution to a particular judge for the express purpose of forcing that judge to disqualify himself or herself. Thus, any mandatory disqualification system would need to account somehow for this possibility. One method of doing so might be through a provision under which the other party could waive the disqualification.

Practical and logistical considerations
The disclosure issue potentially overlaps with issues being considered by the Task Force on Judicial Campaign Conduct. Staff for the two task forces will continue to communicate so as not to work at cross-purposes.

As with contribution limits, the level at which a judge might be required to disclose contributions could potentially vary from county to county. Alternatively, it might be possible to craft a system in which judges are required only to disclose contributions of an amount equal to some percentage of their total contributions received. For example, the public might think that any single contribution that totals 5 percent of the total funds received by a judge is significant enough to raise partiality issues.

Issues Pertaining to Content and Filing Requirements of Candidates' Campaign Finance Disclosure Reporting

Judicial candidates, like other candidates for elective office, are required by law to report certain finance disclosures, at specified times, to the California FPPC. These issues focus not only on what is required to be reported and when, but also on the means by which that information is reported and, therefore, made accessible by the public.

Content and timing of disclosure reporting

The task force considered what recommendations, if any, to make with respect to the content and timing of judicial candidates' disclosure reports regarding contributions received and expenditures made.

Factors in favor of recommending changes to the current disclosure law

While not a change to the law itself, there may be benefit to recommending some sort of outreach or education so that all judicial candidates will be aware of exactly what needs to be disclosed and, more importantly, that disclosures often need to be made to the Secretary of State (SOS) as opposed only to the local registrar of voters.

Factors against recommending changes to the current disclosure law

The current state of California's disclosure law has received praise for its comprehensiveness, suggesting that no changes are necessary. In a survey of all 50 states done by the Campaign Disclosure Project, a collaboration of the UCLA School of Law, the Center for Governmental Studies, and the California Voter Foundation, California was ranked second overall (after Washington State) in terms of disclosure of campaign finance information. Significantly, California ranked first overall in terms of the substance of the law itself—what must be disclosed, when, etc. Where California lost points was in the technical usability of the SOS's online Cal-Access database.

E-filing of mandatory disclosure reporting

The task force considered whether to recommend that judicial candidates be required to e-file their mandatory disclosures, and, if so, with what agency and at what aggregate contribution/expenditure level.

The task force learned that it is quite difficult (1) to come up with actual hard data from recent election cycles about how much judicial candidates actually receive (and from whom) and spend (and on what), and (2) to access candidates' disclosure reports, even though those documents are ostensibly public information. (This difficultly is reflected to a degree in the survey by the Campaign Disclosure Project, although access issues are even more challenging with respect to judicial candidates, as discussed below.) The

problem is that while judicial candidates are required to disclose this information both to the local county registrar and the SOS, some candidates do not know of the latter requirement. Thus, some judicial candidates' information must be obtained from the local county registrars, and the availability of information and practices for obtaining it vary from county to county.

For information that is filed with the SOS, there is an additional issue: superior court judges are not defined as statewide officers under the Political Reform Act (PRA). Thus, they are not required to e-file their disclosure reports, which means that if a judge has filed paper reports with the SOS, the public must still request a paper copy of the disclosures and pay the attendant copying and mailing costs. Also, even if a judge were defined as a statewide officer under the PRA, the e-filing requirement applies only where a candidate has brought in and/or expended $50,000 in the aggregate. Many judicial races, especially in smaller counties, do not involve this level of funding.

Factors in favor of judicial candidates being required to e-file their disclosures
As described above, given the current difficulty in obtaining judicial candidates' disclosure information, a system of e-filing would presumably greatly enhance the public's ability to access information about who is contributing to judicial campaigns and in what amounts, and what judicial candidates are spending their campaign funds on and in what amounts. This would, in turn, presumably enhance the public's trust and confidence that the judiciary is not subject to influence by monetary contributions.

The SOS already has in place a working online e-filing database, Cal-Access. SOS staff have informally estimated that the cost, in dollars and staff required, of adapting that system to accept e-filing by judicial candidates would likely be low. SOS staff have also opined that neither the SOS nor local county registrars would be likely to oppose making the SOS solely responsible for receiving and maintaining superior court judicial candidates' financial disclosures (including e-filing and paper copies).

The actual statutory changes that would be needed in order to require superior court judicial candidates to e-file would probably be relatively minimal; no major legislative rewrites would likely be necessary.

Factors against judicial candidates being required to e-file their disclosures
While it is true that the SOS has free software that can be used to e-file, that software does not include any other functionality, such as ledgers. Thus, a candidate who used the SOS's free software would also need to use third-party ledger software, meaning that data would need to be inputted twice. The members of the task force have been told that, because of this inefficiency, few candidates who currently e-file actually use the SOS's software and instead use third-party vendors. While the cost of doing so is not expensive in the context of many campaigns, given the relatively low cost of a judicial campaign, it may be financially burdensome on a candidate to have to spend limited funds on e-filing, in addition to other expenses.

Under current law, candidates who are required to e-file do not have to do so until they reach an aggregate contribution and expenditure amount of $50,000. Judicial races, however, often do not reach this $50,000 e-filing threshold. Thus, it may be that amending the law to require judicial candidates to e-file might not, in the end, result in much of a change in terms of what information is readily available to the public online. To account for this situation, the $50,000 threshold might need to be lowered for judges.

Issues Pertaining to Independent Expenditures

Data show that groups making independent expenditures (IEs) in judicial elections often have substantial resources with which to influence the campaign process; indeed, sometimes they have more money to bring to the table than the candidates actually running for judicial office. This phenomenon raises special concerns when appointed judges who have never run campaigns are standing for retention. But the problems posed by substantial "independent" spending in judicial elections are not limited to that context.

Judges up for retention are at a special disadvantage for two reasons. First, they did not need to raise funds to support their initial selection, so they may not have preexisting contributor lists to which they can turn if they are attacked. That problem is exacerbated when opponents of appointed judges wait until late in the election season to launch opposition campaigns, as IE sponsors often do.

Second, IE groups with substantial monetary resources may be able to buy up large chunks of available airtime in the days before the election, making it difficult even for candidates who do have resources or outside support to respond to their opposition. The candidates may have to use less effective or more time-consuming means of communication. As a result, the message of the IE may be far more likely to reach voters than would any information coming from the sitting judge.

Of course, the principal point of measures designed to address IEs is not to protect the interests of incumbent judicial officers, although good judges deserve that protection. The goal is to safeguard the public's confidence in fair and impartial decisionmaking. If the public knows that incumbent judicial officers have reason to fear attack by high-spending IE groups, the public may come to believe that decisions by those judges will be influenced by their desire to avoid such attacks. In other words, the public may conclude that judges are susceptible to the influence of money, not through contributions to those judges, but by the threat of large IEs being made against those judges.

Another concern raised by IEs is the fact that they may greatly influence the public's perception through advertising or other means of information dissemination that presents false or misleading information about judges, judicial decisionmaking, and the role of the judicial branch generally. Put another way, IE groups seeking to unseat an incumbent judge may, depending on how they paint that judge or his or her action, give the public an entirely incorrect impression of the role of the judiciary, and the incumbent may be unable to raise sufficient finances to counter any such advertising. Hence, the impression

that the public is left with may be incorrect, and this misunderstanding could operate to damage the public's perception of the judicial branch as a whole.[13]

The above concern is related to two additional IE issues. First is the general difficulty that the public may face in attempting to understand exactly who the persons or entities are behind IE groups, which often have bland, nondescriptive names like "Californians for Justice." If the public could easily learn whose financial interests were funding IEs targeted at unseating or defeating judicial candidates, any negative comments about those candidates could be put into a more accurate context. Second is the fact that in some states, IE groups have targeted judges as political candidates who can be attacked fairly easily and cheaply as a means of motivating a voter base for some unrelated purpose. For example, in a district with a close congressional race, an attack on a judge who ruled in favor of a woman's right to choose to have an abortion may be used to motivate a prolife voting bloc to get to the polls.

Limitations on corporate and union financing

The task force considered whether to recommend limiting corporate and union financing of judicial candidates or IEs, directly or indirectly.

Under current law, it is not permissible to limit spending by an IE group,nor is it permissible to limit the overall amount of money that an IE can raise. It may, however, be possible to limit the ability of corporations and unions to expend treasury funds on IEs and to limit corporate or union contributions to political action committees (PACs) that run IEs.

Factors in favor of limiting corporate and union financing of judicial candidates and IEs

Corporations and unions typically are far better poised than individual persons to infuse substantial amounts of money into elections, whether in the form of contributions to candidates directly or IEs. Limiting the amount that these entities may contribute, which is legally permissible, may therefore reduce overall the presence and influence of large sums of money in judicial elections. And doing so will almost certainly have a positive effect on the public's perception as to the ability of corporate or moneyed interests to buy judicial elections.

If it also is the case that corporations and unions typically are not significant contributors to IEs involving judicial candidates—at least in California thus far—then efforts to limit corporate/union contributions may meet with little political resistance while at the same time having a substantial effect on boosting public trust and confidence that the ability of corporate/union interests to affect judicial races is being limited.

[13] The Task Force on Judicial Candidate Campaign Conduct is considering recommending the creation of a uniform statewide standard of conduct and a single oversight entity that would addresses the conduct of all participants in judicial elections, including candidates and special interest groups. Also, the Task Force on Public Information and Education is examining issues related to responding to public criticism or attention that threatens to undermine fair and impartial courts.

Factors against limiting corporate and union financing of candidates and IEs
Regarding limiting contributions to candidates themselves, many judges may rely on endorsements by and funding from certain public unions, including police and fire unions.

Further, California historically has not imposed limits of this nature on corporations or unions. Thus, doing so now would represent a major shift in California policy.

Limiting the ability of corporations to contribute to judicial candidates could have the side effect of limiting a number of law firms from making contributions if those law firms are formed as corporations rather than partnerships. Because law firms historically are large donors to judicial candidates—in particular, incumbents—this could significantly affect those candidates' ability to raise funds.

Practical and logistical considerations
Although limitations on corporate/union contributions to IE groups and corporate/union IEs were considered in connection with limitations on corporate/union contributions to judicial candidates themselves, it may be necessary in future discussions to separate the two. As indicated above, limitations on contributions directly to candidates potentially implicate different issues than would limitations on IEs (whether directly or through PACs).

Effect of contribution limits on IEs
The task force considered whether to recommend limits on monetary contributions to judicial candidates generally, given data from recent FPPC hearings indicating a link between the imposition of contribution limits and the rise of IE spending.

Factors in favor of contribution limits, given FPPC data
Although the data seem to indicate a causal link between contribution limits and IE spending, those limits may not be the only cause for the increase. Data show that IE spending is up in recent years, regardless of the presence of contribution limits.

Factors against contribution limits, given FPPC data
The FPPC data reflects only those IE groups that actually report as IE groups. It does not reflect groups that do not report based on claims that they are, for example, engaging only in "issue advocacy," and thus are not making electioneering communications or engaging in express advocacy. Thus, the actual rise in IE spending may be even higher than reported.

Expanding required IE disclosure reporting
The task force considered whether to recommend expanding the scope of what information must be reported by IE groups under the campaign finance reporting laws.

Factors in favor of expanding the scope of information that must be reported
Often, contributions to one IE group will come from yet another IE group, making it much more difficult for the public to trace the source of the money that is being spent on

certain communications. It may, therefore, be desirable to require reporting of information at one level deeper, i.e., to require reporting not only of which groups are contributing to groups that make IEs, but also to require reporting of which groups are contributing to those contributor groups, all in the same report.

Factors against expanding the scope of information that must be reported
As mentioned above, California law is already very comprehensive and nationally well regarded with respect to the scope of its campaign finance disclosure/reporting laws. It may be that no changes are necessary and that any such changes would not further the overall goals of the CIC, namely increasing public trust and confidence in the impartiality of the courts.

Opponents of such enhanced reporting requirements could argue that they are so burdensome as to have a chilling effect on speech, thus running afoul of First Amendment protections.

Changes affecting timing of IE disclosure reporting
The task force considered whether to recommend changes affecting the timing of reporting/disclosures regarding IEs, e.g., requiring that reports pertaining to advertising be made when the contract for that advertising is executed as opposed to when the ad is run, or shortening the time for making disclosures as the election approaches.

Factors in favor of advancing the timing of IE reporting
Candidates (particularly in retention elections, where campaign funds are not typically raised as a matter of course) are highly susceptible to last-minute attacks by IE groups, whether in the form of advertising or otherwise. This is because, under current law, IE reporting is required at the time of the communication for which the IE was made. Thus, in practical terms, an IE group may spend money on and prepare an attack ad yet not run that ad until very close to the election, at which time the candidate will not have had time to prepare and will have little time in which to respond.

The above scenario works to the detriment of the public, as it gives the public less time before the election in which to obtain information about the persons or groups who are behind the IE. Earlier disclosure would allow the public more time to try to understand who is funding attack ads and possibly to discern why. On this last point, the task force notes that many attacks on judges are funded by corporate interests, yet focus on hot-button public issues such as a judge's stance on crime rather than on the business issues that are truly of concern to the groups funding the ads.

Factors against advancing the timing of IE reporting
Some have argued that this improperly forces the disclosure of political tactics and strategies.

Also, just because money is committed to, or even spent on, advertising or other communications does not mean that those ads/communications will ever be made or run.

And if they ultimately are not made public, there is no basis for public disclosure of the funding sources behind those ads/communications.

Practical and logistical considerations
One implementation consideration is how early to advance the required disclosure. Possibilities include when funds are actually expended on a communication or even earlier, e.g., when a contract is signed or funds are otherwise committed to the communication.

Changes to disclaimers on advertisements funded by IE groups
The task force considered whether to recommend changes about the disclaimers that must appear on the face of advertisements funded by IE groups.

Factors in favor of recommending changes to the disclaimers
Under the current law, certain information appears on the face of advertising only as to the two largest contributors of $50,000 or more to the IE group funding the ad. Because judicial elections in general appear to generate less spending, it is possible that, in those elections, there will not be contributors of more than $50,000 to IE groups funding advertising. Thus, it may be desirable to lower the $50,000 disclaimer threshold for judicial elections.

Factors against recommending changes to the disclaimers
California law is already very comprehensive with respect to laying out disclaimer requirements.

Advertising, regardless of the election involved, is expensive, meaning that the $50,000 threshold likely will be met, even in connection with judicial elections.

Trying to craft an exception for advertising pertaining to judicial elections only could be both politically challenging and logistically unworkable.

Next Steps for Task Force

The task force has a number of issues still to consider, including the following:

- Whether to recommend legislative changes designed to expand the scope of which groups are subject to campaign disclosure/reporting laws applicable to IEs;

- Whether to recommend enhancing enforcement mechanisms for ensuring compliance with disclosure/reporting laws applicable to IEs and/or penalties for violation of those laws;

- Whether to recommend some system of public funding designed to allow incumbent judicial officers in retention elections to respond to last-minute IEs;

- Whether to recommend some system of public funding designed to allow participating judicial candidates in contested elections to respond to IEs attacking them or supporting their opponents;

- Whether campaign contribution limits, if recommended, should vary by contributor type, e.g., attorneys/law firms, individuals, PACs, etc.;

- Whether to recommend a system under which judicial candidates may agree to voluntary spending limits, including possibly a "cap gap" system to help keep parity between candidates who agree to limits and opponents who do not;

- Whether to recommend statutory or other changes specifically designed to address campaigning against a wealthy, self-funded opponent; and

- The possibility of recommending a system of full or partial public funding of judicial elections, including in both contestable elections and retention elections.

Task Force on Judicial Selection and Retention

Executive Summary

Charge
The Task Force on Judicial Selection and Retention is charged with evaluating and making periodic reports and final recommendations to the steering committee regarding any proposals to improve the methods and procedures of selecting and retaining judges and regarding the terms of judicial office and timing of judicial elections.

Findings
Under the present system of judicial selection in California, the State Bar's Commission on Judicial Nominees Evaluation (JNE) evaluates and reports to the Governor on every person prior to appointment as a trial court judge or an appellate court justice. The California system functions largely in the same manner as the merit selection systems in some other states. Because California's system works well and is partially responsible for the high quality of judicial appointments in California, the task force finds that it is not necessary to adopt formally an alternative form of merit selection. Rather, JNE is a unique form of merit selection that has served the state well, and its basic operation and logistics are working well and should not be modified. JNE should be retained in lieu of adopting another form of merit selection such as the "Missouri Plan."

The task force further finds that voters in contested and open elections are often not well informed about judicial candidates.

The task force also finds that recommended improvements to diversity on the bench should be focused on matters that are within the control of the judicial branch.

Following a detailed discussion concerning formal judicial evaluation programs in other states, the task force finds that formal, public judicial evaluation programs are uniquely suited to trial courts that hold retention elections; any other form of judicial evaluation should be voluntary and for the judge's own self-improvement.

Finally the task force finds that California's present system of elections for superior court judges and appellate court justices is working appropriately, although some specific changes could improve the system.

Recommendations for Immediate Implementation
The task force has no recommendations for immediate implementation.

Background

Problem Statement

In recent years, many states have seen a dramatic increase in threats to both the impartiality of and the public's confidence and trust in state judiciaries. A number of these threats pertain in some way to issues involving the selection and retention of judges, especially the increased politicization and partisanship in judicial selection and the perceived lack of appropriate accountability by some judges to the public they serve.

While California has been fortunate so far in the general nonpartisan, nonpolitical nature of judicial elections, there seems to be general agreement that the state is not immune to these issues, which could arise at any time. An improved selection process that highlights the importance of merit and seeks to improve the diverse nature of the bench will certainly increase public trust and confidence in the judiciary, as will increasing appropriate accountability of the bench. Finally, removing aspects of the system that might encourage partisanship will reduce the likelihood of a highly politicized judiciary.

Methodology and Process for Exploring Issues and Reaching Solutions

Review potential issues

The task force initially met and brainstormed about issues concerning matters within its charge, which consisted of any items that concern the initial selection of judges (either by election or appointment) and the process for retention of existing judges (currently by contestable elections for superior court judges and retention elections for appellate court justices). Based on direction from the CIC steering committee, the task force did not take up issues concerning how to retain experienced judges within the branch, as such matters are not within the charge of the CIC or the task force.

The initial review, which took place during the September 11, 2007, meeting in San Francisco, identified a variety of potential issues concerning judicial selection and retention. At its November 5, 2007, meeting in Sacramento, the task force reviewed many reference materials regarding its initial list and further refined the list of issues to be addressed.

At its February 4, 2008, meeting in Burbank, the task force heard a presentation on the Utah judicial evaluation system that is used in conjunction with the Utah retention election system. The task force further discussed judicial evaluation generally and refined other issues that were under consideration. The chair then established two working groups as discussed below. At the same time, the task force membership was enhanced with the addition of representatives from the CJA and the State Bar.

At its April 28, 2008, meeting in Sacramento the task force considered the recommendations from the two working groups and agreed on tentative recommendations to be made to the steering committee.

Establish working groups
Because of the task force's two-pronged charge—focusing both on judicial selection and judicial retention—its chair established two working groups.

The Working Group on Judicial Selection, which is chaired by Victoria B. Henley, director and chief counsel, Commission on Judicial Performance, makes recommendations on issues relating to (1) diversity, (2) JNE, and (3) Judicial Selection Advisory Boards (also known as Governor's screening committees).

The Working Group on Judicial Retention, which is chaired by Associate Justice H. Walter Crosky, of the Court of Appeal, Second Appellate District, makes recommendations on issues relating to (1) the electoral process, and (2) judicial evaluation.

Together, the task force and working group chairs, task force staff, and the consultant determine which subissues need to be considered, and which working group should have primary responsibility for those issues. The working groups meet telephonically, with the goal of arriving at tentative recommendations and rationales to take to the full task force. The task force, after considering the tentative recommendations and reasoning of the working groups, will come to agreement on a comprehensive package of recommendations to make to the CIC steering committee.

Meetings
To date, the task force has held four in-person meetings: September 11 and November 5, 2007, and February 4 and April 28, 2008. Each working group has met telephonically two times.

Resources
Numerous documents, including law review and newspaper articles, data compilations, and published cases, have been distributed electronically to members of the task force for review and consideration.

In addition, the task force has heard California Administrative Director of the Courts William C. Vickrey concerning the Utah judicial evaluation system.

Consultant
Seth S. Andersen serves as consultant to the task force. Mr. Andersen is the executive vice-president of the American Judicature Society (AJS). Founded in 1913, AJS is a national, nonpartisan organization of judges, lawyers, and members of the public who work to maintain the independence and integrity of the courts and increase public understanding of the judiciary. Among its primary areas of focus are judicial independence and judicial selection. Mr. Andersen has been assisted by Malia Reddick, director of Research and Programs at AJS.

Collaboration with other groups
Lead staff has met informally with lead staff from the other CIC task forces on a number of occasions to discuss potential areas of overlap.

Preliminary Recommendations

The task force's recommendations to date are set forth below and are presented by issue.

Issues Relating to a Diverse Judiciary

Aspirational constitutional language concerning a diverse judiciary

Recommendation

There should be no effort to place aspirational language in the California Constitution providing for a diverse judiciary.

Discussion

There is little to be gained by such language in lieu of taking other action that may actually help gain a more diverse bench. Further, the attempt to get adoption of this language would be divisive.

Subordinate judicial officer (SJO) appointments, in particular, commissioners

Recommendation

The courts should be directed to consider, when making appointments of SJOs, both the diverse aspects of the appointees and the appointees' exposure to and experience with diverse populations and their related issues.

Discussion

One of the major sources of judicial appointments is from the SJOs who serve the courts. Thus, to the extent that the diverse nature of that group—either in terms of its own diversity or its experience with diverse populations—can be increased, the likelihood of more diverse judicial appointments also will increase. This is one area where the judicial branch has control and can help make a more diverse bench. Any rule of court adopted on this issue should make clear that these issues are not a requirement but a desired quality. Experience with diverse populations is probably the more important quality.

JNE consideration of issues of diversity

Recommendation

One of the factors that JNE should consider is the exposure to and experience a candidate has with diverse populations and issues related to those populations. Whether the individual candidate comes from a diverse background should not, however, be a factor in the evaluation.

Discussion

The experience of a candidate working with diverse populations is an important consideration and a strong factor in increasing the trust and confidence of a diverse public with the bench. This includes the positive aspects of cultural awareness and working with diverse populations as well as negative attitudes or actions toward people from diverse backgrounds. For example, a person might believe that a person who keeps his or her eyes focused on the ground is being disrespectful while, in that person's culture, such behavior may actually be one of respect. When evaluating any particular candidate,

however, JNE cannot appropriately assess the how the racial, religious, economic, or practice background of that candidate might affect the overall makeup of the bench. Because JNE is not the appointing authority but rather assesses qualifications, an individual's diverse background is not an appropriate consideration.

This recommendation is similar to the present JNE practice in some regards. Rule II, section 6(a) of the JNE rules has "freedom from bias" as one of the factors identified for all evaluations.

Citizenship as a qualification to become a judge

Recommendation

While United States citizenship should be a requirement for selection as a judge, the task force supports making this proposed constitutional change only if other constitutional amendments are proposed.

Discussion

There is no current requirement that a person be a United States citizen in order to become a judge in California, and it is likely that there is no implicit requirement. On the other hand, it is unlikely that a noncitizen would be appointed or elected a judge. Thus, the task force recommends adding an amendment requiring citizenship only if other constitutional amendments are recommended by the CIC.

Encouraging more diversity in judicial applications

Recommendation

The task force will suggest to the Task Force on Public Information and Education that the outreach and publicity programs recommended by that task force include one that encourages all members of the bar to consider applying for judicial office.

Discussion

Part of any effort to increase diversity in the bench is increasing the diversity of those who apply for judicial positions. Increasing the diversity of SJOs is one partial solution. Increasing the diversity of the applicant pool generally is another solution.

Issues Relating to JNE

JNE as a form of merit selection

Recommendation

The JNE process is a unique form of a merit selection that has served California well. It should be retained in lieu of adopting another form of merit selection such as the "Missouri Plan."

Transparency of JNE

Background of JNE members

Recommendation. The background and diversity of the JNE members should be given more publicity.

Discussion. Public trust and confidence in the findings of JNE will be increased if the diverse membership of JNE itself is known to the public. The State Bar provides background information about the JNE membership on its Web site and is considering adding pictures.

Release of ratings

Recommendation. A JNE rating of "not qualified" (and thus, by the absence of announcement, a rating of at least "qualified" or better) for a trial court judge should be made public automatically at the time of appointment of a person with that rating. This provision should be made by statutory amendment rather than rule change. The current practice of release of the rating for an appellate justice appointee also should be made mandatory and permanent.

Discussion. Currently the JNE rating of an appellate justice is released at the time of the Commission on Judicial Appointments hearing. While Government Code section 12011.5(h) permits either the Commission on Judicial Appointments or the Board of Governors discretionary authority to request or release any rating, the practice is that this information is always released. Nonetheless, there is no requirement that this be done, and the Board of Governors has unfettered discretionary authority to release "not qualified" ratings for trial court judge appointees.

The task force believes that disclosure of all "not qualified" ratings, particularly if done automatically, would increase the public's confidence in the process.

It is possible that release of all JNE ratings could have a chilling effect on some potential applicants, but if the change in procedures were to be well publicized, all potential appointees would have fair notice that evaluation results are public.

Because the distinctions between the various forms of qualified ratings are more subtle and the candidate is qualified in all cases, the disclosure of ratings of "exceptionally well qualified" (EWQ), "well qualified" (WQ), or "qualified" (Q) is not as important and may be undesirable for trial court judges who are subject to contestable elections. The same issue (i.e., release of the specific level of a qualified rating) does not apply to appellate justices who are subject to uncontested retention elections.

Making the change by statute will ensure greater permanency of the requirement.

JNE procedures and rating system

Recommendation. Have the judicial branch's California Courts Web site explain the judicial appointment process and link to both the State Bar's JNE Web site and the Governor's Judicial Application Web site with appropriate information about JNE procedures and the rating system.[14] The JNE Web site and the Governor's Web site should be more accessible and should contain videos explaining the process. Law schools should be encouraged to provide this information to law students by, for example, encouraging JNE members, both past and present, to give presentations at law schools.

JNE should be encouraged to provide greater publicity by having its members capitalize on opportunities to speak to local and specialty bar associations, service organizations, and other civic groups.

Discussion. The JNE system is California's form of merit selection. JNE evaluation is a statutorily mandated function, and there do not appear to be any downsides to publicizing the procedures that it uses.

Conflicts of interest

Recommendation. Require that any member of the State Bar Board of Governors who attends a JNE meeting comply with the JNE conflict-of-interest rules.

Discussion. JNE rules presently provide that all commissioners complete a statement under oath that they have read and understand rule IV, which addresses conflicts of interests, and that they agree to comply with its provisions. Members of the Board of Governors who attend a JNE meeting should complete the same statement signed by JNE commissioners.

The JNE rules currently provide that a member of the Board of Governors is subject to the same confidentiality rules as JNE commissioners. It is appropriate to extend this to the conflict of interest rules as well.

JNE governance

Oversight and rules for the JNE system

Recommendation. The current system, under which JNE is a voluntary activity of the State Bar, should be retained.

Discussion. Currently JNE functions as a voluntary activity by the State Bar, although the requirement for JNE evaluation prior to appointment is statutory. Originally this requirement was inserted to preclude the Lieutenant Governor from making judicial appointments when the Governor was absent from the state. More recently, the issues regarding JNE have resulted from the debate concerning the diversity or lack of diversity in the Governor's judicial appointments. The current JNE system works well, and there does not appear to be any reason to change its oversight and rules.

[14] The task force will refer to the Task Force on Public Information and Education the issue of whether to recommend that the judicial branch should provide greater publicity to the JNE system, and, if so, how.

Funding for the JNE system
Recommendation. The current funding of JNE by the State Bar through member dues should be retained.

Discussion. No direct money is given to the State Bar to run the JNE system, although the Legislature indirectly provides a source to fund much Bar activity through the passage of the dues bill. JNE funding is a small part of the overall State Bar budget and likely accounts for less than 1 percent of the total expenses and less than 0.5 percent of the chargeable expenses.

JNE does not restrict the number of candidates that can be referred to it for evaluation. JNE must report its evaluation to the Governor within 90 days after submission. (Gov. Code, § 12011.5(c).) Thus, there could be a potential funding and personnel issue if there were to be a substantial increase in the number of candidates JNE evaluates or that the Governor sends to JNE at one time for evaluation.

The overall annual cost for the JNE program is approximately $1 million. While this is an important State Bar function, it is not considered part of the core discipline function. The nonfixed, per candidate costs for JNE are approximately $4,000 per evaluation.

If JNE were funded as a line item as part of a dues bill, the system would be much more susceptible to legislative influence, as it would be more apparent.

JNE membership
Recommendation. The current number and types of memberships and appointing authority for JNE should be maintained.

Discussion. The present membership of JNE is set by the Board of Governors, which is also the appointing authority for the commission. Public trust and confidence in the system is at least partially based on the public perception of the membership.

Currently there is a maximum of 38 members, although this number can be less depending on vacancies. Members are appointed for one-year terms and for not more than three consecutive terms. Membership on JNE is a demanding position and also can require significant individual expense for mailing evaluation forms.

The present system functions well, and there do not appear to be reasons to change it, although the use of JNE in contested and open elections might require a change for those uses (discussed below).

Evaluation of candidates in contested and open elections
Recommendation
The task force favors mandatory participation of all candidates in contested and open elections in a JNE form of evaluation. The task force recognizes, however, that initially a voluntary program would serve as a useful test of this program and would have the

advantage of being easier to implement because it could be done by statute. A mandatory participation program would require a constitutional amendment.

Discussion
Currently JNE evaluates only persons being considered for judicial appointment who are referred by the Governor's staff. There is no process for evaluation of candidates for judicial office who are seeking a judgeship by either opposing a sitting judge in an election or seeking election to an open position.[15] It would be theoretically possible to require nonincumbent candidates to submit to the JNE process, although arguably this might require a constitutional amendment.

Many bar associations across the country perform evaluations of both sitting judges running for reelection and attorney challengers, but it is difficult to compare the relative qualifications and experience of sitting judges and attorney challengers. If JNE were to evaluate candidates in a contested election, it would most certainly need to freshly evaluate actual judicial performance of sitting judges.

The work of JNE is not fully scalable, so merely adding additional members for election periods, therefore, would not be a solution. Instead it is desirable to set up election-year JNE-type panels consisting of former members.

The proposed process also would have to consider the election application cycle since a JNE evaluation currently takes about 90 days.

JNE ratings
Levels of ratings
Recommendation. The current system of four levels of ratings should be retained.

Discussion. The four levels provide a helpful tool to the Governor in differentiating between various candidates for a judicial position. While the differences between a "Q" and a "WQ" may be somewhat more subjective, the differences between an "EWQ" and a "WQ" at the top and a "Q" and an "NQ" at the bottom are fairly clear.

Factors involved in arriving at a rating
Recommendation. The criteria used by JNE in evaluating a candidate should be retained and should be publicized.[16]

Discussion. Rule II, section 6 of the JNE rules lists qualities/factors for consideration in evaluating judicial candidates as follows:

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[15] A preliminary review of data supplied by the CJA indicates that, on average, there are 28 contested or open superior court elections on the ballot in each general election cycle. This ranges from a high of 47 elections (2002) to a low of 15 (2004), with a median number of 31. Some of the data may be incomplete, however, and the 1992 election year is excluded because of lack of data on open elections.
[16] The members of the task force agreed that the issue of how to inform better the public, including attorneys, about the rating system should be referred to the Task Force on Public Information and Education.

> The commission seeks to find the following qualities in judicial candidates. However, the absence of any one factor on the lists below is not intended automatically to disqualify a candidate.
>
> Qualities for all judicial candidates: impartiality, freedom from bias, industry, integrity, honesty, legal experience, professional skills, intellectual capacity, judgment, community respect, commitment to equal justice, judicial temperament, communication skills, job-related health.
>
> In addition, for:
>
> Trial court candidates: decisiveness, oral communication skills, patience.
>
> Appellate court candidates: collegiality, writing ability, scholarship.
>
> Supreme Court Candidates: collegiality, writing ability, scholarship, distinction in the profession, breadth and depth of experience.

Other criteria are listed in Government Code section 12011.5(d):

> In determining the qualifications of a candidate for judicial office, the State Bar shall consider, among other appropriate factors, his or her industry, judicial temperament, honesty, objectivity, community respect, integrity, health, ability, and legal experience. The State Bar shall consider legal experience broadly, including, but not limited to, litigation and nonlitigation experience, legal work for a business or nonprofit entity, experience as a law professor or other academic position, legal work in any of the three branches of government, and legal work in dispute resolution.

The criteria used by JNE in making an evaluation of a candidate for judicial office are similar to those used in other states.

Commentary on ratings

Recommendation. The release of a rating by JNE should not be accompanied by a statement of reasons.

Discussion. The investigation and evaluation process by JNE is confidential, which enhances the accuracy and completeness of the information received. The release of reasons will compromise this confidentiality and thus ultimately the value and validity of the rating system.

Use of "not qualified" rating

Recommendation. The rating for a judicial candidate that indicates a person should not be appointed should be kept as "not qualified" rather than changed to "not recommended."

Discussion. The current lowest rating by JNE is "not qualified," which implies that the candidate being evaluated should not be a judge. Changing the recommendation to "not recommended" might suggest that the candidate might still be qualified to be a judge at a later time even though JNE does not currently recommend the appointment of the person. It also implies that the person should not be appointed at this time without commenting on the person's overall qualifications.

The problem with making this change, however, is that it also implies that JNE is a "recommending" body rather than a "rating" body. This would be seen by some as compromising the impartiality of JNE. Finally, the "not qualified" rating in its current form strongly discourages the Governor from still making such an appointment; this argument in favor of keeping the current rating is strengthened by the above recommendation that the "not qualified" rating be released in all cases of appointment.

Voting numbers

Recommendation. The release of a rating by JNE should not contain information about the number of commissioners who voted for the rating.

Discussion. The value of JNE's rating system is the high regard in which its ratings are held. Instituting vote counts and minority views is not part of the information currently made public, and such information is likely to weaken the public perception of the validity of the rating without providing any public benefit.

Time of evaluation

Recommendation. The current system, in which JNE does not evaluate all applicants but only those referred to it by the Governor, should be retained.

Discussion. One alternative to how JNE determines whom to evaluate would require an evaluation of every person who submits an application to the Governor (whereas the current system evaluates only those candidates whose names are submitted to JNE by the Governor). The question is, who should narrow down the initial group of candidates?

Having the Governor narrow down the list of candidates seems more effective and efficient because the Governor will have a variety of considerations to account for, some of which do not constitute issues that are evaluated by JNE. The reduction of the possible pool by the Governor prior to JNE evaluation will still ensure that those who are eventually appointed have been evaluated by JNE without unduly stressing the capacity of JNE to do the evaluations.

JNE currently limits the number of candidates a Governor can submit for evaluation primarily based on JNE's capacity. The current system appears to be working well.

Issues Related to Whether California's Electoral Process Should Change

Alternatives for trial courts

Retention by contestable or retention elections

Recommendation. The present system of contestable elections following initial appointment or election is preferred to either retention elections, triggered retention elections, or hybrid systems. Under the current system a judge appears on the ballot only if an opponent files to run against the judge. If there is no opponent, the judge's name does not appear on the ballot and the judge is automatically reelected. Most trial court judges retain their offices unopposed.

Discussion. The potential alternatives to the current system are discussed below.

Regular retention elections: A regular retention election system has the disadvantage of requiring the judge's name appear on the ballot. This can make the judge a target even if no organized campaign was initially mounted against him or her. In addition, in medium-size or large counties, the number of judges' names appearing on the ballot could lead to "ballot fatigue" and the potential removal of a judge from office for no reason other than the length of the ballot.

Triggered retention elections: The alternative of a triggered retention election has disadvantages depending on the type of trigger. Initially, any triggered system implies that a judge's name appears on the retention ballot only if he or she has a "problem." Thus, such judges attract a base of negative votes simply by being on the ballot. In addition, a number of individuals will vote against any judge in current retention elections, and those persons also would be added to the negative base. A judge facing retention under a triggered system, therefore, would start with a significant negative base under the best of circumstances. No state currently has a triggered retention election system.

If the trigger is a petition of the voters, this might invite interest groups, disgruntled litigants, political parties, or others with an axe to grind against a particular judge or in opposition to a single decision by a judge to launch campaigns to force judges to appear on the retention ballot. This could inject interest group politics into the elections. In addition, some might see a system with a petition as the only triggering system as equivalent to a lifetime appointment subject only to recall.

If the trigger is based on an unacceptable evaluation score of a judge, this uses the evaluation system in a manner that is contrary to using evaluations as a means of judicial self-improvement. It also raises significant due process questions in that a judge could lose his or her position because of an unacceptable evaluation without being able to adequately contest the evaluation. The only example of such a system was a proposal for reform in Illinois in the late 1990s, which did not get adopted.

There are no other reasonable triggers.

The working group also is opposed to a hybrid system in which there is an appointment followed by an initial contestable election followed by retention elections. This system is used in part in Illinois and Pennsylvania, neither of which is generally viewed as a positive model for judicial selection (although that reputation is primarily due to the partisan influence on judicial elections). New Mexico uses a similar system, with a nominating commission appointment followed by a contestable partisan election followed by retention elections. The opposition to this system is based on the same reasons as opposition to standard and triggered retention elections.

Open elections (i.e., all initial selections by appointment)
Recommendation. The present system, which permits open elections—that is, an election in which there is no incumbent judge on the ballot—should be retained. This is important to provide greater opportunities for judicial service.

Discussion. While some concerns have been expressed that open elections can lead to partisan battles, there has been little, if any, evidence of this in California. Indeed, contestable elections provide equal opportunity for partisan battles with the added problem of demonizing the incumbent judge. In addition, open elections provide a useful "safety valve" for good candidates who might not otherwise be appointed either under the current governor or perhaps any governor. A prohibition on open elections could also lead to a less diverse bench.

Threshold signatures for recall of a judge
Recommendation. The constitutional provision for the recall of a judge, requiring a petition with signatures of 20 percent of those voting for a judge in the most recent election, should be changed to 20 percent of those voting for district attorney (because this is the only county official elected in every county).

Discussion. Because races for judicial office are likely to draw a low number of voters, using the number of voters who voted for that office in the most recent election as a base makes it too easy to mount a recall petition against a judge. The working group instead suggests using the number of voters for the office of district attorney as a base, as district attorney is the only county official that is elected in every county.

Timing for first election after appointment
Recommendation. A trial judge shall serve at least two years prior to his or her first election.

Discussion. Judges should have an opportunity to make a record on which he or she can run. The current system, which measures the time to the first election based on the occurrence of the vacancy rather than the appointment of the judge, may unfairly penalize a judge based on how promptly the vacant office is filled.[17] A strong argument can be made that two years is a minimum acceptable time for a judge to make a record of

[17] A chart showing this time limit nationwide will be attached to the CIC's final report to the Judicial Council.

service.Some highly qualified attorneys may be discouraged from abandoning a rewarding or lucrative practice to seek judicial appointment if they face the very real possibility of encountering a strong electoral challenge shortly after assuming the bench.

Appellate court elections

Current system of appointments and retention elections

Recommendation. Keep the present system of initial gubernatorial appointments with retention elections.

Discussion. The current system works well and avoids much of the partisanship that would ensue with contested or contestable elections.

Frequency of retention elections

Recommendation. Retention elections should be held every two years (during both the gubernatorial and the presidential elections) rather than the present system of every four years (during the gubernatorial elections).

Discussion. With elections every two years, there would be 50 percent fewer retention elections on a ballot and a concomitant reduction in ballot fatigue. Based on historical trends, elections in presidential years also would have somewhat greater turnout than elections in gubernatorial years. With elections every two years instead of every four, the length of time a person would serve before facing the initial retention election could be reduced by up to two years.

Length of term following initial retention election—full term or remainder of term

Recommendation. Provide that following the initial retention election, a justice serves a full 12-year term, rather than a 4-, 8-, or 12-year term depending on the length of term remaining for the previous justice holding that seat.

Discussion. Under the current system, at the first retention election, a justice is elected to the remaining term (or a full term if there is no remaining term) of his or her predecessor. This means that the term is either 4, 8, or 12 years. Under the proposal, a justice would be retained for a full 12-year term at each retention election.

Time for first retention election

Recommendation. Provide that a justice serves at least two years before the first retention election, paralleling the recommendation for trial judges.

Discussion. Under the current system, a justice may face an initial retention election within a short time (less than a year) following his or her appointment. The arguments above for allowing more time before an election for trial judges are equally relevant here.

Next Steps for Task Force

Governor's Screening Committees (Judicial Selection Advisory Boards)

There are a number of issues and proposals being made regarding the Governor's judicial screening committees. This is primarily a matter for the other two branches and involves considerations of politics more than of judicial administration or public trust and confidence. The task force has noted, however, that greater transparency in the judicial selection process could be helpful to the public trust and confidence in the branch and that certain issues involving Judicial Selection Advisory Boards (JSAB) might be appropriate for further study, including the potential value of an Executive Order–based formalization of the existing JSABs.

Currently, governors may choose whether to have screening committees, and, if so, how many, where, and how they function. The membership of these committees and their effect on the diversity of a governor's appointments are a matter of current controversy. Publicizing the recommendations of a governor's informal screening committees would likely have a chilling effect on potential judicial aspirants.

In several states (Georgia, Massachusetts, New Hampshire, and Vermont) the governor has issued an executive order stating that the governor will use nominating committees with recommendations based on a merit system and restrict the appointments to candidates recommended by that committee. Alternatively, the governor could simply announce or decide that the only persons appointed to judicial office would be ranked at least "qualified" or at least "well qualified" by JNE.

There is a strong argument for use of executive orders to formalize judicial screening processes in states where governors have the constitutional authority to appoint judges to fill vacancies. While these plans are by their nature less durable and broadly based than constitutionally mandated judicial nominating commission systems, they can carry several benefits for governors, judicial applicants, and the public at large. The existence of judicial nominating commissions created by executive order sends a strong message to the judiciary, the bar, and the public that the governor seeks the most highly qualified applicants for judicial appointment. Such systems also can provide political cover for governors who may feel pressured by supporters or allies to make appointments that are not based entirely on professional qualifications and fitness for office.

Nonetheless, the determination about whether the governor should take such action seems to be more a consideration for the political and executive process.

Judicial Evaluation

Whether there should be an evaluation program that is confidential and released to the judge only, for purposes of self-improvement, training, and feedback, is currently being studied. Any such program, however, should provide for user review and be designed and implemented using appropriate survey principles.

An alternative program has been suggested under which the CJA might conduct and fund such an evaluation program.

There may be a problem with the implementation of the program under California's open records laws. In addition, there could be pressure brought on some judges to release the results if other judges were to release the results of their own surveys. These issues of confidentiality and privacy need to be further discussed.

Even a judge's own program of self-evaluation might be subject to public disclosure. Further research concerning this issue and the possible public disclosure exception for personnel records is pending.

The task force should consider other methods of promoting feedback to a judge that the judge can voluntarily implement.

Details of JNE-type Evaluations in Contested and Open Elections

A number of mechanical and logistical considerations are yet to be resolved in regard to JNE-type evaluations in contested and open elections, including:

- How much advance notice needs to be allowed of a person's intent to be a candidate so that JNE can complete the evaluations for the various contested and open elections expected;

- What other impact the proposal might have on the JNE commission or the State Bar;

- How these evaluations should be funded, i.e., whether they should be absorbed in the current system, funded through special state funding for JNE evaluations, or funded by the candidates themselves, including already evaluated incumbent judges; and

- How the ratings should be communicated to the voters, and whether the communication should include an explanation for the ratings as well as a description of the system.

Triggering of Write-in Contests in Unopposed Elections

Current law provides that a petition with only 100 signatures (no matter what the size of the county) forces an unopposed judge's name onto the ballot because of a potential write-in campaign. This extremely low threshold can result in a judge being "targeted" for improper reasons, such as the current situation in Los Angeles County in which three Hispanic judges had write-in petitions submitted for no apparent reason other than they are Hispanic. The task force will continue to study this matter and propose an appropriate number of signatures for the write-in contest trigger.

Appendixes

Appendix A – Commission for Impartial Courts Steering Committee Roster

Appendix B – Task Force on Public Information and Education Roster

Appendix C – Task Force on Judicial Candidate Campaign Conduct Roster

Appendix D – Task Force on Judicial Campaign Finance Roster

Appendix E – Task Force on Judicial Selection and Retention Roster

Appendix A

Commission for Impartial Courts
Steering Committee Roster

As of April 17, 2008
(Expires August 31, 2009)

Hon. Ming W. Chin, Chair
Associate Justice of the
California Supreme Court

Mr. Joseph W. Cotchett, Jr.
Attorney at Law
Cotchett, Pitre & McCarthy
Burlingame

Mr. Bruce B. Darling
Executive Vice-president, University Affairs
University of California

Hon. Peter Paul Espinoza
Assistant Supervising Judge of the
Superior Court of California,
County of Los Angeles

Mr. John Hancock
President
California Channel
Sacramento

Hon. Brad R. Hill
Associate Justice of the Court of Appeal,
Fifth Appellate District

Ms. Janis R. Hirohama
President
League of Women Voters of California
Manhattan Beach

Hon. William A. MacLaughlin
Judge of the Superior Court of California,
County of Los Angeles

Hon. Judith D. McConnell
Administrative Presiding Justice of the
Court of Appeal, Fourth Appellate District

Hon. Barbara J. Miller
Judge of the Superior Court of California,
County of Alameda

Hon. Douglas P. Miller
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two

Hon. Dennis E. Murray
Presiding Judge of the
Superior Court of California,
County of Tehama

Hon. William J. Murray, Jr.
Presiding Judge of the
Superior Court of California,
County of San Joaquin

Hon. Ronald B. Robie
Associate Justice of the Court of Appeal,
Third Appellate District

Hon. Karen L. Robinson
Judge of the Superior Court of California,
County of Orange

Mr. Michael M. Roddy
Executive Officer
Superior Court of California,
County of San Diego

Ms. Patricia P. White
Member, State Bar of California
Board of Governors

JUDICIAL COUNCIL LIAISONS

Hon. Peter Paul Espinoza
Assistant Supervising Judge of the
Superior Court of California,
County of Los Angeles

Hon. Dennis E. Murray
Presiding Judge of the
Superior Court of California,
County of Tehama

AOC ADVISOR TO THE COMMITTEE

Hon. Roger K. Warren, (Ret.)
Scholar-in-Residence
Administrative Office of the Courts

AOC LEAD COMMITTEE STAFF

Ms. Christine Patton, Project Director
Regional Administrative Director
Bay Area/Northern Coastal Regional Office
Administrative Office of the Courts

Appendix B

Task Force on Public Information and Education Roster

As of January 11, 2008
(Expires February 28, 2009)

Hon. Judith D. McConnell, Chair
Administrative Presiding Justice of the
Court of Appeal, Fourth Appellate District

Mr. Stephen Anthony Bouch
Executive Officer
Superior Court of California,
County of Napa

Dr. Frances Chadwick
Assistant Professor of Education
California State University at San Marcos

Ms. Nanci L. Clarence
President, Bar Association of San Francisco
Partner, Clarence & Dyer LLP

Mr. Marshall Croddy
Director of Programs
Constitutional Rights Foundation
Los Angeles

Hon. Lynn Duryee
Judge of the Superior Court of California,
County of Marin

Hon. Martha M. Escutia
Partner
Manatt, Phelps & Phillips, LLP
Los Angeles

Mr. John Fitton
Executive Officer
Superior Court of California,
County of San Mateo

Hon. Edward Forstenzer
Presiding Judge of the
Superior Court of California,
County of Mono

Mr. José Octavio Guillén
Executive Officer
Superior Court of California,
County of Imperial

Hon. Steven E. Jahr
Judge of the Superior Court of California,
County of Shasta

Hon. Linda L. Lofthus
Judge of the Superior Court of California,
County of San Joaquin

Hon. Franz E. Miller
Judge of the Superior Court of California,
County of Orange

Dean Elizabeth Rindskopf Parker
Dean, University of the Pacific
McGeorge School of Law

Hon. David Sargent Richmond
Assistant Presiding Judge of the
Superior Court of California,
County of Amador

Mr. Jonathan Shapiro
Writer/Producer
Beverly Hills

Ms. Terry Stewart
Chief Deputy City Attorney
Office of the City Attorney,
City and County of San Francisco

ADVISORY MEMBER

Dr. Timothy A. Hodson
Executive Director
Center for California Studies
California State University at Sacramento

TASK FORCE CONSULTANT

Mr. Bert Brandenburg
Executive Director
Justice at Stake Campaign
Washington, D.C.

AOC LEAD COMMITTEE STAFF

Mr. Peter Allen, Program Director
Manager
Office of Communications
Executive Office Programs Division
Administrative Office of the Courts

Appendix C

Task Force on Judicial Candidate Campaign Conduct Roster

As of January 9, 2008
(Expires February 28, 2009)

Hon. Douglas P. Miller, Chair
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Two

Ms. Christine Burdick
Executive Director and General Counsel
Santa Clara County Bar Association

Mr. Thomas R. Burke
Partner
Davis, Wright and Tremaine, LLP
Society of Professional Journalists

Hon. Joseph Dunn
Chief Executive Officer
California Medical Association
Sacramento

Hon. Richard D. Fybel
Associate Justice of the Court of Appeal,
Fourth Appellate District, Division Three

Hon. Michael T. Garcia
Judge of the Superior Court of California,
County of Sacramento

Mr. Dennis J. Herrera
City Attorney
Office of the City Attorney,
City and County of San Francisco

Ms. Beth Jay
Principal Attorney to the Chief Justice
California Supreme Court

Hon. Ronni B. MacLaren
Judge of the Superior Court of California,
County of Alameda

Hon. Rodney S. Melville (Ret.)
Judge of the Superior Court of California,
County of Santa Barbara

Mr. G. Sean Metroka
Executive Officer
Superior Court of California,
County of Nevada

Hon. James M. Mize
Presiding Judge of the
Superior Court of California,
County of Sacramento

Professor Mary-Beth Moylan
Professor of Law
Assistant Director Appellate Advocacy
University of the Pacific
McGeorge School of Law

Mr. James N. Penrod
Member
State Bar of California Board of Governors
Morgan, Lewis & Bockius
San Francisco

Hon. Maria P. Rivera
Associate Justice of the Court of Appeal,
First Appellate District, Division Four

Hon. Byron D. Sher
Former Member of the California Senate
Placerville

Mr. Alan Slater
Chief Executive Officer
Superior Court of California,
County of Orange

Hon. Nancy Wieben Stock
Presiding Judge of the
Superior Court of California,
County of Orange

Professor Kathleen M. Sullivan
Stanley Morrison Professor of Law
Stanford Law School

TASK FORCE CONSULTANT

Professor Charles Gardner Geyh
John F. Kimberling Professor of Law
Indiana University School of Law

AOC LEAD COMMITTEE STAFF

Mr. Mark Jacobson, Committee Counsel
Senior Attorney
Office of the General Counsel
Administrative Office of the Courts

Appendix D

Task Force on Judicial Campaign Finance Roster

As of April 25, 2008
(Expires February 28, 2009)

Hon. William A. MacLaughlin, Chair
Judge of the Superior Court of California,
County of Los Angeles

Hon. Gail A. Andler
Judge of the Superior Court of California,
County of Orange

Ms. Rozenia D. Cummings
President
California Association of Black Lawyers
Mill Valley

Hon. Alden E. Danner
Judge of the Superior Court of California,
County of Santa Clara

Ms. Denise Gordon
Executive Officer
Superior Court of California,
County of Sonoma

Mr. Charles Wesley Kim, Jr.
Counsel
Yelman & Associates
San Diego

Hon. Bruce McPherson
Former Member of the California Senate
Santa Cruz

Hon. Heather D. Morse
Judge of the Superior Court of California,
County of Santa Cruz

Ms. Angela Padilla
Member
The Bar Association of San Francisco
Orrick, Herrington & Sutcliffe
San Francisco

Mr. Michael D. Planet
Executive Officer
Superior Court of California,
County of Ventura

Hon. Mark B. Simons
Associate Justice of the Court of Appeal,
First Appellate District, Division Five

Mr. Gerald F. Uelmen
Executive Director
California Commission on the
Fair Administration of Justice
Santa Clara

Hon. Michael P. Vicencia
Judge of the Superior Court of California,
County of Los Angeles

Mr. Thomas Joseph Warwick, Jr.
Attorney at Law
Grimes & Warwick
San Diego

ADVISORY MEMBER

Mr. Robert Leidigh
Commissioner
California Fair Political Practices Commission
Rescue

TASK FORCE CONSULTANT

Ms. Deborah Goldberg
Director, Democracy Program
Brennan Center for Justice at NYU
School of Law
New York

AOC LEAD COMMITTEE STAFF

Mr. Chad Finke, Committee Counsel
Managing Attorney
Office of the General Counsel
Administrative Office of the Courts

Appendix E

Task Force on Judicial Selection and Retention Roster

As of March 21, 2008
(Expires February 28, 2009)

Hon. Ronald B. Robie, Chair
Associate Justice of the Court of Appeal,
Third Appellate District

Mr. Ralph Alldredge
Secretary/Treasurer of CNPA
Publisher, Calaveras Enterprise
San Andreas

Mr. Chris Arriola
Deputy District Attorney
Office of the District Attorney,
County of Santa Clara

Mr. Joseph Starr Babcock
Special Assistant to the Executive Director
The State Bar of California
San Francisco

Hon. H. Walter Croskey
Associate Justice of the Court of Appeal,
Second Appellate District, Division Three

Hon. Marguerite D. Downing
Judge of the Superior Court of California,
County of Los Angeles

Hon. Bonnie M. Dumanis
District Attorney
County of San Diego

Hon. Kim Garlin Dunning
Assistant Presiding Judge of the
Superior Court of California,
County of Orange

Mr. William I. Edlund
Attorney at Law
Bartko, Zankel, Tarrant & Miller
San Francisco

Hon. Terry B. Friedman
Judge of the Superior Court of California,
County of Los Angeles

Ms. Victoria B. Henley
Director and Chief Counsel
Commission on Judicial Performance
San Francisco

Hon. Scott L. Kays
Judge of the Superior Court of California,
County of Solano

Mr. J. Clark Kelso
Professor of Law and Director,
Governmental Affairs Program and the
Capital Center for Government Law and Policy
University of the Pacific
McGeorge School of Law
Sacramento

Mr. Jack London
Partner
Morrison and Foerster, LLP
San Francisco

Mr. John Mendes
Executive Officer
Superior Court of California,
County of Placer

Hon. William J. Murray, Jr.
Presiding Judge of the
Superior Court of California,
County of San Joaquin

Hon. Chuck Poochigian
Former Member of the California Senate
Fresno

Hon. Edward Sarkisian, Jr.
Judge of the Superior Court of California,
County of Fresno

Mr. Roman M. Silberfeld
Managing Partner
Robins, Kaplan, Miller & Ciresi LLP
Los Angeles

Ms. Sharol Strickland
Executive Officer
Superior Court of California,
County of Butte

Hon. Sharon J. Waters
Judge of the Superior Court of California,
County of Riverside

Hon. David S. Wesley
Judge of the Superior Court of California,
County of Los Angeles

Mr. Michael R. Yamaki
Attorney at Law
Pacific Palisades

TASK FORCE CONSULTANT

Mr. Seth S. Andersen
Executive Vice-president
American Judicature Society
The Opperman Center at Drake University

AOC LEAD COMMITTEE STAFF

Mr. Michael A. Fischer
Committee Counsel
Senior Attorney
Office of the General Counsel
Administrative Office of the Courts